LAND INTERESTS IN WOOD COUNTY, TEXAS

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON MERCHANT MARINE AND FISHERIES HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

H.R. 187

A BILL RELATING TO CONVEYANCE OF CERTAIN LAND FOR USE BY THE UNITED STATES FISH AND WILDLIFE SERVICE

AND

H.R. 188

A BILL RELATING TO THE RIGHTS AND INTEREST OF THE UNITED STATES OF AMERICA UNDER A CONSERVATION EASEMENT AFFECTING CERTAIN LAND IN WOOD COUNTY, TEXAS

JULY 11, 1989

Serial No. 101-27

Printed for the use of the Committee on Merchant Marine and Fisheries

U.S. GOVERNMENT PRINTING OFFICE

21-863 == WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

H561-64

COMMITTEE ON MERCHANT MARINE AND FISHERIES

WALTER B. JONES, North Carolina, *Chairman*

GERRY E. STUDDS, Massachusetts
CARROLL HUBBARD, JR., Kentucky
WILLIAM J. HUGHES, New Jersey
EARL HUTTO, Florida
BILLY TAUZIN, Louisiana
THOMAS M. FOGLIETTA, Pennsylvania
DENNIS M. HERTEL, Michigan
ROY DYSON, Maryland
WILLIAM O. LIPINSKI, Illinois
ROBERT A. BORSKI, Pennsylvania
THOMAS R. CARPER, Delaware
DOUGLAS H. BOSCO, California
ROBIN TALLON, South Carolina
SOLOMON P. ORTIZ, Texas
CHARLES E. BENNETT, Florida
THOMAS J. MANTON, New York
OWEN B. PICKETT, Virginia
JOSEPH E. BRENNAN, Maine
GEORGE J. HOCHBRUECKNER, New York
BOB CLEMENT, Tennessee
STEPHEN J. SOLARZ, New York
FRANK PALLONE, JR., New Jersey
GREG LAUGHLIN, Texas
NITA M. LOWEY, New York
JOLENE UNSOELD, Washington

ROBERT W. DAVIS, Michigan
DON YOUNG, Alaska
NORMAN F. LENT, New York
NORMAN D. SHUMWAY, California
JACK FIELDS, Texas
CLAUDINE SCHNEIDER, Rhode Island
HERBERT H. BATEMAN, Virginia
JIM SAXTON, New Jersey
JOHN R. MILLER, Washington
HELEN DELICH BENTLEY, Maryland
HOWARD COBLE, North Carolina
CURT WELDON, Pennsylvania
PATRICIA SAIKI, Hawaii
WALLY HERGER, California
JIM BUNNING, Kentucky
JAMES M. INHOFE, Oklahoma
PORTER J. GOSS, Florida

EDMUND B. WELCH, *Chief Counsel*
BARBARA L. CAVAS, *Chief Clerk*
GEORGE D. PENCE, *Minority Staff Director*
DUNCAN C. SMITH III, *Minority Chief Counsel*

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

GERRY E. STUDDS, Massachusetts, *Chairman*

WILLIAM J. HUGHES, New Jersey
THOMAS R. CARPER, Delaware
DOUGLAS H. BOSCO, California
SOLOMON P. ORTIZ, Texas
THOMAS J. MANTON, New York
ROBIN TALLON, South Carolina
GEORGE J. HOCHBRUECKNER, New York
STEPHEN J. SOLARZ, New York
FRANK PALLONE, JR., New Jersey
JOLENE UNSOELD, Washington
EARL HUTTO, Florida
BILLY TAUZIN, Louisiana
ROY DYSON, Maryland

DON YOUNG, Alaska
CLAUDINE SCHNEIDER, Rhode Island
HERBERT H. BATEMAN, Virginia
JIM SAXTON, New Jersey
JOHN R. MILLER, Washington
HOWARD COBLE, North Carolina
CURT WELDON, Pennsylvania
PATRICIA SAIKI, Hawaii
WALLY HERGER, California

BILL WOODWARD, *Staff Director*
JEFF PIKE, *Senior Professional Staff*
WILL STELLE, *Counsel*
ROD MOORE, *Minority Professional Staff*

CONTENTS

	Page
Hearing held July 11, 1989	1
Text of H.R. 187	46
Text of H.R. 188	48
Statement of:	
Bezanson, Janice, Texas Committee on Natural Resources	34
Prepared statement	94
Cardwell, Walter W., chairman, Texas Water Development Board (prepared statement)	106
Collins, Sam, general manager, Sabine River Authority of Texas	7
Prepared statement	54
Donnelly, Tom, executive director, National Water Resources Association	29
Prepared statement	71
Hall, Hon. Ralph M., a U.S. Representative from Texas	2
McKinney, Larry, director of resource protection, Texas Parks and Wildlife Department	30
Prepared statement	74
Morris, General Jack, chairman, Water Resources Congress	27
Prepared statement	67
Sharp, Joe, president, Little Sandy Hunting and Fishing Club	10
Prepared statement	64
Spear, Michael J., regional director, U.S. Fish and Wildlife Service	4
Prepared statement	50
Studds, Hon. Gerry E., a U.S. Representative from Massachusetts, and Chairman, Subcommittee on Fisheries and Wildlife Conservation and the Environment	1
Wynn, Buck, chairman, Texas Water Commission	32
Prepared statement	81
Yost, Jerry, Texas State Representative, Longview, Texas (prepared statement)	114
Communications submitted:	
Akers, Jerry, (Sierra Club): Letter of 3 July 1989, to Hon. Gerry E. Studds	127
Allen, Alan, (Sportsmen Conservations of Texas): Letter of 6 July 1989, to Hon. Gerry E. Studds	122
Bell, D. Craig, (Western States Water Council): Letter of 6 July 1989, to Hon. Gerry E. Studds	134
Dunkle, Frank, (U.S. Fish and Wildlife Service): Letter of 7 April 1987, to Hon. Orrin G. Hatch	102
Goodson, Leroy, (Texas Water Conservation Association): Letter of 7 July 1989, to Hon. Gerry E. Studds	128
Hatch, Hon. Orrin G., United States Senator: Letter of 19 May 1987, to D. Craig Bell	104
Hoge, Carson H., (Brazos River Authority): Letter of 10 July 1989 (H.R. 188), to Hon. Gerry E. Studds	139
Hoge, Carson H., (Brazos River Authority): Letter of 10 July 1989 (H.R. 187), to Hon. Gerry E. Studds	141
Lambert, Lanny S., (city manager, City of Terrell, Texas): Letter of 5 July 1989, to Hon. Gerry E. Studds	126
Morgan, Bill, (mayor, City of Greenville, Texas): Letter of 9 February 1988, to Texas Water Development, along with Resolution No. 88-06	116
Newsome, Sharon L., (National Wildlife Federation): Letter of 9 August 1989, to Hon. Gerry E. Studds	144
Pfeiffer, Fred N., (San Antonio River Authority): Letter of 5 July 1989, to Members, Committee on Merchant Marine and Fisheries, along with Resolution No. R-791	137

Page

Communications submitted—Continued
Ratliff, William R., (Texas State Senator): Letter of 29 March 1989, to Hon. Jack Fields 143
Riehn, Carl W., (North Texas Municipal Water District): Letter of 3 July 1989, to Hon. Gerry E. Studds 120
Telfair, Ray C., II, (Texas Chapter, The Wildlife Society): Letter of 28 June 1989, to Hon. Gerry E. Studds 130
Vance, Danny F., (Trinity River Authority of Texas): Letter of 11 July 1989, to Hon. Gerry E. Studds 132
Worsham, Jos. Irion, (Worsham, Forsythe, Sampels & Wooldridge): Letter of 5 July 1989, to Hon. Gerry E. Studds 124

H.R. 187, RELATING TO CONVEYANCE OF CERTAIN INTERESTS IN LAND FOR USE BY THE UNITED STATES FISH AND WILDLIFE SERVICE; AND H.R. 188, RELATING TO THE RIGHTS AND INTEREST OF THE UNITED STATES OF AMERICA UNDER A CONSERVATION EASEMENT AFFECTING CERTAIN LAND IN WOOD COUNTY, TEXAS

TUESDAY, JULY 11, 1989

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:10 p.m., in Room 1334, Longworth House Office Building, the Hon. Gerry E. Studds, (chairman of the subcommittee) presiding.

Members present: Representatives Studds, Hughes, Hutto, Ortiz, Hochbrueckner, Pallone, Unsoeld, Bateman, and Saxton.

Also present: Representative Ralph M. Hall (Texas).

Staff present: Will Stelle, Bill Woodward, Lisa Murray, Joyce Sacco, Tom Melius, Sue Waldron, and Lori Williams.

OPENING STATEMENT OF HON. GERRY E. STUDDS, A U.S. REPRESENTATIVE FROM MASSACHUSETTS, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Mr. STUDDS. The Subcommittee meets this afternoon to discuss two bills introduced by Congressman Ralph Hall of Texas. Both H.R. 187 and 188 would affect the ability of the U.S. Fish and Wildlife Service to acquire and maintain an interest in certain lands for fish and wildlife conservation purposes.

The legislation was introduced in response to the decision of the Little Sandy Hunting and Fishing Club of Wood County, Texas to convey a conservation easement covering 3,800 acres of prime bottomland hardwoods to the U.S. Fish and Wildlife Service.

As we will see today, there are those who, for conservation reasons, support the club's decision, and there are others who oppose it because it interferes with plans for a water development project in the area.

Obviously, this sort of conflict is not unusual. Bottomland hardwoods are an important source of habitat for wildlife resources.

They are also often located, as in this case, in river basins that are prime candidates for inclusion in water projects.

The question before the Subcommittee today is not whether we can erase the potential for conflict between those who would conserve and those who would develop resources in Wood County, or elsewhere in Texas, and around the country. We cannot.

The real question is whether the balance between the legal rights of those on one side and those on the other side of such conflicts should be changed. More specifically, should we make the longstanding right of the Fish and Wildlife Service to acquire land for conservation purposes subservient to the actions of State legislatures?

Such a change would have a dramatic effect on the land acquisition programs of the Service, not only in Texas, but everywhere in the United States.

A second question is whether Congress should intervene in the Wood County case when the propriety of the actions of the Fish and Wildlife Service in that case is still being litigated in Federal court.

I look forward to hearing this afternoon from those on both sides of these questions, and I want to thank the witnesses who have traveled a great distance, even by Texas standards, to be with us here today.

Mr. STUDDS. Before we go to our first panel of witnesses, I will call for an opening statement on our visiting colleague, and I guess for the moment, honorary Member of the Committee, the gentleman from Texas. Mr. Hall, let me just first ask, are there other Members of the Committee who wish to make opening statements?

Mr. ORTIZ. I do not have a statement.

Mr. STUDDS. If not, we will hear from the gentleman from Texas, Mr. Hall, the author of the legislation.

STATEMENT OF HON. RALPH M. HALL, A U.S. REPRESENTATIVE FROM TEXAS

Mr. HALL. Thank you, Mr. Chairman, and Members of the Committee. I do thank you for your assistance, Mr. Chairman, in setting this hearing and holding this hearing. While, as you know, I have a constituency priority in these bills, I have a deep concern for the direction of our national policy on the issues that are the subject of the two bills, H.R. 187 and 188.

I think you will hear from our panel today our concern for the future of water and wildlife, as well as our concern for the future direction our country wants to take on issues of States' rights.

Your indulgence and concern for the role your Committee and the Congress may need to play in this national policy is certainly appreciated by witnesses on all sides of this particular question.

On December 18th, 1986, the U.S. Fish and Wildlife Service accepted an easement of 3,082 acres located in Wood County, Texas, in the 4th Congressional District, which I have the honor to serve, from a hunting club for inclusion in the Wildlife Refuge System.

The land is classified as, quote, "bottomland, hardwood, waterfowl wintering and breeding habitat" and has been utilized by the hunting club for at least a 100 years.

Because the area is now a part of the Wildlife Refuge System of the U.S. Fish and Wildlife Service, it cannot be used in ways that would alter the value of the site for waterfowl and other wildlife species.

However, it can, and still will be used, exclusively, by the members of the private club. This means that land which is being maintained as a wildlife refuge by the Federal Government, at taxpayers' expense, can only be used by an exclusive few. What is disconcerting is at the time that the easement was accepted by U.S. Fish and Wildlife Service, this same 3,082 acres was an area that was being studied by the U.S. Bureau of Reclamation, the Sabine River Authority, and the State of Texas as a future water resource project site, to provide an adequate water supply to the area throughout the 2030's, the 2040's, and the 2050's.

This, in all likelihood, precipitated the drive to grant the easement as a means of preserving the private club, and I do not have any real quarrel with the members of that club. I probably would have done the same thing, had I been a member of the club.

It was not an unintelligent move. The major problem with Fish and Wildlife Service acceptance of this easement donation, from Little Sandy Fishing and Hunting Club in East Texas, is the fact that Fish and Wildlife failed to discuss or coordinate their actions with the Sabine River Authority, State water agencies, the Bureau of Reclamation, or even the Corps of Engineers, at any time during the process, even though Fish and Wildlife was aware of the authority's interest concerning the Waters Bluff Reservoir.

The Subcommittee has been told that Fish and Wildlife will represent the Administration's position. Well, it is a funny way to represent without even contacting others who also represent the Administration.

The previously mentioned interested parties were not even aware of the Fish and Wildlife Service's impending actions until they received a document titled Environmental Assessment and Decision.

The draft Environmental Assessment does not represent a full disclosure document since it does not address the views of other Federal and State agencies and organizations.

It seems to me that we ought to be able to work together and reach a compromise on such issues that would allow water supply systems to be constructed, while at the same time preserving excellent wildlife habitats for all to enjoy.

We could still, in my opinion, have the wildlife habitats and the hunting lodge. Hopefully, we will work toward that as this legislation moves.

The Fish and Wildlife decision was opposed by local public officials, by many local citizens who know how vital the water supply is to the future of the Sabine Basin, and to the State of Texas. It was opposed by all State and Federal agencies concerned, with the exception of the Texas Parks and Wildlife Department, and I think they will be heard here today.

I believe we need to call on the Fish and Wildlife Service, and all Federal agencies to consider the crippling effect on the ability of State and local agencies to provide needed resources, as well as the broader impact of this action, i.e. setting a precedent for stopping other projects in your State, and all over this country.

There are other such projects, but so far as we know Mr. Chairman, this is the first such project that was not subordinated to the public interest.

I think that while this is not just strictly a State's rights thrust although it is clearly that, too—but it is a thrust to protect the rights of those who owe the duty in the public domain to provide water for future generations. This could be a pattern of absolutely prohibiting that, unless one or both of my bills are passed.

Mr. Chairman, I thank you, and I would certainly appreciate if we could just get right on with the first panel that we have. I have one gentleman at the end of the panel who has another appointment. We may ask your indulgence a little bit later, if we see that time is running late, to let him testify out of order.

With that, I yield back my time. Thank you, sir.

Mr. STUDDS. I thank the gentleman.

What we propose to do is proceed with two panels, and the people on the first panel are welcome to come forth to the table now. What we are going to do is ask you—I gather the staff has discussed this with you beforehand—is to each have an oral presentation of roughly five minutes, which, the English translation of that is no more than five minutes. Otherwise, it will be physically impossible for us to hear everybody who wishes to be heard. There is a likelihood we are going to be interrupted by votes on the Floor of the House as it is.

So we will go to the first panel. Your written statements, some of which are quite lengthy and detailed, will appear in the record, in full, as if they have been delivered in full, and we will recognize you in the order in which you appear on the list here.

I misspoke. There are three members of the first panel. We will begin with Mr. Michael Spear, the Regional Director of Region 2 of the Fish and Wildlife Service. Mr. Spear.

STATEMENTS OF A PANEL, CONSISTING OF MICHAEL J. SPEAR, U.S. FISH AND WILDLIFE SERVICE, REGIONAL DIRECTOR, REGION 2; SAM COLLINS, GENERAL MANAGER, SABINE RIVER AUTHORITY; AND JOE SHARP, PRESIDENT, LITTLE SANDY HUNTING AND FISHING CLUB

Mr. SPEAR. Thank you, Mr. Chairman. Mr. Chairman, I am Michael Spear, Regional Director of the Southwest Region of the Fish and Wildlife Service (Service). I appreciate the opportunity to testify on H.R. 187 and 188 which relate to the acceptance of the easement you have discussed.

The Service first became aware of the Little Sandy Hunting and Fishing Club in 1983 when the Middle Sabine River bottom, where the club is located, was identified as one of the highest quality hardwood forest sites in the State.

The Service published a Bottomland Hardwoods Concept Plan in May 1985. In this plan, the Middle Sabine River bottom was identified as one of 14 Priority 1 areas in the State.

The club contacted the Service in August 1985 concerning the possibility of donating an easement. In July 1986, the Draft Environmental Assessment on the proposed Little Sandy easement was published.

In September 1986, the Sabine River Authority and the Texas Water Development Board met with the Service to request a public meeting and extension of the comment period, and to present the Service with a copy of the feasibility study for Waters Bluff reservoir.

A public comment session was held on October 27, 1986, at the request of the Sabine River Authority. The Final Environmental Assessment with a Finding of No Significant Impact was signed on December 12 and distributed to the public. The easement was accepted by the Service in Washington, D.C. on December 18, 1986.

The Sabine River Authority sued the Service in Federal District Court challenging the Final Environmental Assessment and the decision to accept the easement. That litigation is pending.

The club easement protects over 3,800 acres of unique old-growth bottomland hardwood forest and open water habitat. The area has been rated as one of the most important waterfowl habitats for mallards and wood ducks in the Central Flyway.

The site is of value to a number of animal species of special concern, including the wood stork and osprey, and supports a colonial waterbird colony of over 10,000 birds.

Under the Refuge Administration Act, the donated interest in this land became part of the National Wildlife Refuge System (System). Thus, use of the land for any water development, including the proposed Waters Bluff project, is prevented without either a determination of refuge compatibility by the Service, or an Act of Congress removing the area from the System.

Because of the potential conflict with water development, the Service considered the matter carefully before accepting the donation. Protection of rapidly disappearing bottomland hardwood habitat is our highest priority for land acquisition in the Texas-Oklahoma region. However, we do not intend needlessly to frustrate the water development objectives of Texas or any other State.

In this particular case our Environmental Assessment determined that many alternatives to the Waters Bluff reservoir are available and that the project had not been approved by the State.

Because the donation maintains the status quo in terms of ecological value of the land, and water development is neither needed during the planning horizon nor precluded forever, I recommended we accept the donation, and as I said earlier, it was signed by the Director.

There is concern by some that our bottomland hardwood protection efforts may threaten other proposed reservoirs in East Texas. I believe these concerns are unfounded. We have surveyed the entire region for hardwood areas.

The 14 best areas in Texas contain over 460,000 acres. The Service's goal—a joint project with Texas Parks and Wildlife and Oklahoma Department of Wildlife Conservation—is to protect 250,000 acres in both States. We therefore have considerable flexibility to meet our goal with a minimum impact on potential water development projects.

H.R. 187 would require the concurrence of the appropriate State legislature before any water resource land could be acquired by the Service.

This bill would also require that the general public be guaranteed access at all times. Approval of the affected State legislature would be required for any acquisition of lands for which even feasibility studies have been prepared by local public water authorities.

Conservation easements, either purchased or donated, have been successfully employed since 1958 to protect critically needed habitat.

Approximately 100 units covering nearly 3 million acres of wetland habitat nationwide have been protected by this means. In the Central Valley of California, for example, an effort was initiated in 1979 to protect 100,000 acres. To date, the Service has acquired an interest in 150 tracts totalling 35,000 acres of wetlands at a cost of $17 million.

All but one of these tracts were protected by the use of conservation easements where the owners, which were hunting clubs, retained the hunting rights. Had the Service not pressed forward with acquiring these easement interests, this valuable habitat would probably have been lost to various types of development.

H.R. 187 would apply to a significant percentage of wetlands of the United States. With many State legislatures meeting biennially, this bill could drastically prolong pertinent Service protection projects and potentially defeat projects with even minor conflicts. Any type of water-development project, regardless of purpose, would trigger the provisions of the bill.

The portion of the bill requiring that public access be guaranteed at all times would cause the Service many problems. This provision would prohibit closure, even on a temporary basis, of a portion of any refuge subject to the bill.

Portions of nearly all refuges are routinely closed to the public during parts of the year, or permanently, to protect resources. Requiring public access at all times to these areas would seriously threaten their value for wildlife management and could severely compromise the purposes for which the interests were acquired.

In addition, easements with the right of public access are almost never available. Landowners who continue to own property covered by easements are usually reluctant to convey the right of public access since these owners often continue to occupy the land. Requiring public access for sites protected by conservation easements held by the Service and subject to this bill would effectively prohibit easements in these cases.

Finally, enactment of H.R. 187 would create a dangerous precedent. Passage could encourage the introduction of similar bills requiring approval of the State legislature where potential refuges conflicted with other land uses.

It also might result in legislation promoting other means of weakening or defeating refuge proposals. We believe that the discussion of water allocation and State's rights is of such importance that it should be addressed in a much broader context, and not singly, as with regard to the System.

H.R. 188 would remove the Little Sandy Hunt Club from the System. As I stated previously, litigation is pending on this issue. Therefore, I will not comment, in detail, at this time.

Congress has provided authority to the Department to bring land into the System in accordance with NEPA. This process now maxi-

mizes public involvement. We recommend that any congressional corrective action be within the context of the existing legislative framework.

The Service is seeking to fulfill its obligations to implement the Migratory Bird Conservation Act of 1929 and the Migratory Bird Hunting Stamp Act of 1934 under which conservation easements are accepted. These easements help to achieve the goals of the North American Waterfowl Management Plan (Plan), a joint effort of the Canadian Wildlife Service and the U.S. Fish and Wildlife Service initiated in May 1986.

The Plan calls for the protection of migratory bird habitat in key habitat areas throughout the country, including the bottomland hardwoods area of East Texas.

In addition, the Emergency Wetlands Resources Act of 1986, which was drafted in this Committee and passed on October 3, 1986, reaffirms the commitment of the United States to protect important migratory and wintering waterfowl habitat in the lower Mississippi-Gulf Coast region.

The Act also stresses the need to protect threatened wetland systems. Based on an analysis of the wetland trends from the mid-1960's to the mid-1970's, bottomland hardwood forests had the greatest rate of loss of any wetland type in the United States, with nearly 6 million acres of these forests being converted to other uses.

Thank you for the opportunity to present the Administration's view on these two bills. This concludes my prepared statement.

[The statement of Mr. Spear can be found at the end of the hearing.]

Mr. STUDDS. Thank you, sir. We will go next to Mr. Sam Collins, General Manager of the Sabine River Authority. Mr. Collins, you have five minutes.

STATEMENT OF MR. COLLINS

Mr. COLLINS. All right. Thank you very much, Mr. Chairman. I am Sam F. Collins, Executive Vice President and General Manager of the Sabine River Authority of Texas.

I appear here before you today in support of H.R. 187 and H.R. 188, and I have a longer statement I would like to have as part of the record.

The Authority, created by an act of the legislature in 1949, was established with the responsibilities to develop, conserve and protect the water resources within the Sabine Basin of Texas which covers a part of 21 counties in the State of Texas, and this yellow map is that basin that we have, with our development and our future development.

As a revenue-based agency, the Authority's projects and activities are based on demonstrated needs, since customers actually fund the cost of such services.

At the present time, all of the water-supply projects in the Sabine Basin have been completed without any Federal funds. We have been aware of the need for additional water supplies in the Upper Sabine Basin since shortly after the initiation of the construction of our Lake Fork Reservoir project in 1975.

The entire yield of our Lake Tawakoni, and almost the entire yield of Lake Fork was committed at that time. By 1980, the Authority was receiving requests for water supplies which could not be fulfilled through any existing water-resource project within the Upper Sabine Basin.

In 1981, alternatives for meeting water-supply needs were studied through a coordinated program involving numerous cities and industries in the Upper Basin area. One alternative considered, the upstream transportation via pipeline of water from the large Toledo Bend Reservoir, was addressed in several different studies including the Bureau of Reclamation study and, in each case, was found not to be feasible in terms of project cost and long-term commitment of energy resources.

As a matter of fact, the Fish and Wildlife Service presently supports the transportation of a major portion of the Authority's yield of the Toledo Bend Reservoir from the Lower Sabine River near Orange to the Houston area. This concept has also been endorsed by various environmental groups.

Later Authority studies have shown that only two projects in the Upper Basin are capable of serving the long-term water needs. That is our Waters Bluff and the Big Sandy Reservoirs. Of these two, only Waters Bluff is large enough to supply the better than 200,000 acre-feet per year of water which is needed.

The proposed Waters Bluff Reservoir is a totally new project which was not studied previously, but was included in the Authority's 1985 Update of the Master Plan.

It should be noted that the Service was fully aware of the Authority's studies concerning the Waters Bluff Project in coordinating activities relating to the Bureau of Reclamation's Big Sandy study. However, the Service never mentioned to the Authority, or any other agencies responsible for water supply, any plans concerning acceptance of a conservation easement on the Little Sandy Hunting and Fishing Club property located within the Waters Bluff site.

The Authority first became aware of the proposed easement upon receipt, on September 10, 1986, of the Service's Draft Environmental Assessment. The unilateral acceptance of the easement by the Service represents a precedent-setting action, in that this is the first time that an easement has been accepted in a public-purpose reservoir site.

The proposed Waters Bluff Reservoir was not included in the Texas Water Plan because it had not been identified as a potential site prior to 1984. State law does not require that potential reservoirs be included in the water plan in order for them to be granted a State permit. However, it is anticipated that the Waters Bluff Reservoir will be included in the next revision of the plan, some time in 1990, or 1991.

In May of 1988, the Authority completed the Upper Sabine Basin Regional Water Supply Plan, and by 2030, the population of the Upper Sabine Basin is projected to be 645,000 people, and the 15-county region will be over 2 million. This May 1988 plan shows that 208,000 acre-feet per year of additional water supplies will be need to be developed to meet those 2030 requirements in the Upper Sabine Basin.

In view of the critical need for additional water supplies, the Authority has initiated water conservation measures which include public education programs, metering requirements for all water-supply customers, contract specifications requiring compliance with water conservation rules of the Texas Water Commission, and implementation of the State's only inverted rate structure for the purchase of wholesale raw water supplies. Additional measures undertaken to make more effective use of our existing supplies include the study of systems operation and the joint use of our other two Upper Basin reservoirs, and we have permits allowing that joint use from the Texas Water Commission.

We believe that mitigation requirements for the Waters Bluff Reservoir would be an appropriate alternative to the Club easement acquisition. The predominant amount of bottomland habitat between our Lake Tawakoni and Toledo Bend headwaters—250 miles—would remain unaffected by reservoir development. We believe that an acceptable compromise could have been achieved if the Service would have been willing to seriously discuss the issues. Unfortunately, this was not the course of action chosen by the Service.

After the Service accepted the easement on December the 18th, 1986, and due to the urgency of this matter, the Authority filed a lawsuit in Federal court in order to challenge the acquisition of the easement. However, these problems transcend the case related to the proposed Waters Bluff Reservoir, and are really of national significance. We have a map that shows the United States, and what can happen all over the United States.

Such a trend as acceptance of the easement has national implications, for if the mere donation and acceptance of such easements to the Federal Government for alleged environment reasons will effectively preclude the development of needed water-supply projects located in Texas and other parts of the United States, the State of Texas and the entire country will be affected. In Texas alone, it is anticipated that approximately 75 percent of the State's future water-supply sources may be affected.

We have a map, showing in red, over here, the projects in Texas that will be affected in that State. As has been demonstrated, the Authority currently has requests for water in the Upper Sabine Basin which cannot be fulfilled as all water in that area is already committed.

We have instituted water conservation measures in an attempt to make the greatest use of existing water supplies. Even with these measures we project new water resources of at least 200,000 acre-feet per year will be needed by the year 2030. Waters Bluff Reservoir is the only project in the Upper Sabine Basin large enough to serve those water supply needs.

It is evident that the Service is attempting to impose yet another Federal restriction on the development of future State and local water resource projects even though no Federal funds are being utilized, and I draw your attention to our Attachment Number 21. By imposing the requirement that Congress must authorize a project which includes national refuge system lands, the Service will be able to hold the State and local agencies hostage, and make

all kinds of demands before they would approve of the needed legislation.

The real issue before us today is that the States should have the right to determine their water-supply needs, and not have this decision made by a Federal agency, which would then require approval by Congress, even though no Federal funds are involved. Thank you very much for allowing us to appear here today.

[The statement of Mr. Collins can be found at the end of the hearing.]

Mr. STUDDS. Thank you, sir, and I appreciate the Texas version of five minutes. But you were close. Let me just say that the commotion you hear up here means there is a vote on the Floor of the House. I think there is just one vote. So we will stand in adjournment for approximately 10 minutes. Then we will pick up again with the testimony of Mr. Sharp.

[Recess.]

Mr. STUDDS. We will resume with the final member of panel number one, Mr. Joe Sharp, President of Little Sandy Hunting and Fishing Club. Mr. Sharp, you are recognized for five minutes.

STATEMENT OF MR. SHARP

Mr. SHARP. Thank you, Mr. Chairman, and Members of the Committee. My name is Joe Sharp, and I am president of Little Sandy Hunting and Fishing Club. I live in Longview, Texas, which is about 30 miles from Little Sandy.

Little Sandy has 84 members. We have members from Longview, members from Dallas, and members from other Texas cities. We have members from Louisiana, Colorado, and as far away as New Jersey.

Little Sandy was formed in 1902 with the purchase of 3,800 acres in Wood County, Texas. Little Sandy still has that same 3,800 acres. The timber has never been cut on this land nor has it ever been grazed. This is old growth, bottomland hardwood, and has been described by a biologist as "pristine forest."

The trees are so large in this bottomland, that if two of us held hands we could not reach around them, and so tall, it takes binoculars to see the leaves on the trees to identify them.

We have a bottomland post oak tree that has been identified as a national champion tree, and three other trees that are State champion trees.

We have a large and varied wildlife population, various species from squirrels, possums, beaver, bobcat and deer. We have threatened species which include alligators, and the osprey which is a State-endangered species.

We have a national endangered species, the bald eagle, which winters at Little Sandy. We have over 1,000 herons that nest on this property. Thousands of ducks and geese use Little Sandy as a resting place during their migration each year.

Little Sandy is a unique place and it cannot be duplicated. This is the only spot like it in Texas and there are only a few other spots like it in the United States.

Little Sandy allows access to controlled groups such as school groups, biologists, research groups, wildlife groups, and other naturalist groups.

Little Sandy gave the easement in good faith and at no cost to the Federal Government. This easement that we gave at no cost has been valued at $750,000. If Little Sandy was trying to profit from this property and did not care about preserving it, and did not care about this unique spot that we have, we could probably have sold this property for $5 million, possibly more.

We want to preserve the property in the same State that we got it in 1902, approximately 90 years ago.

We think H.R. 188 would set a bad precedent and we respectfully urge you to reject H.R. 187 and 188. Thank you.

[The statement of Mr. Sharp can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much, sir.

The two bills we are discussing today deal with the same subject, but they do in very different ways. 188 deals with a specific land transaction, and 187 would place a new restriction on land acquisition by the U.S. Fish and Wildlife Service generally.

Both issues are important and I hope we will fully explore them before the afternoon is over.

My questions to the first panel will deal primarily with the Wood County case, while my questions to the second will focus on the more general legislative proposal.

First of all, Mr. Spear, is your testimony to be interpreted as the position of the Administration in opposition to one, or both, or neither of these bills, or is it more subtle than that?

Mr. SPEAR. It was not meant to be subtle, Mr. Chairman.

Mr. STUDDS. I am glad.

Mr. SPEAR. And what it says is that on one—excuse me, I get the numbers mixed up myself.

Mr. STUDDS. No, that was not a loaded question. I just want to make sure we have clearly, on the record, whether or not you are indeed enunciating an Administration position.

Mr. SPEAR. I am enunciating the Administration's position in my testimony.

Mr. STUDDS. And that is one of opposition to 187, and of silence, pending litigation, on 188, is that correct?

Mr. SPEAR. That is correct.

Mr. STUDDS. I want to ask you about a sentence or two in your testimony. On page three, you are speaking of H.R. 188, and you say: "The Congress has provided legislative authority for the Department to bring land into the System in accordance with the process set forth in NEPA. This process—I am reading from your testimony—now maximizes public involvement. We recommend that any congressional corrective action be within the context of the existing legislative framework."

What is the translation of that? What does that mean? Page three, the next-to-last paragraph.

Mr. SPEAR. Yes. My problem is, I was reading off a double-spaced version.

Mr. STUDDS. Sorry about that. That is the third or fourth paragraph from the end of your statement.

Mr. SPEAR. "We believe that the discussion of water allocation and State's rights"—I am sorry, Mr. Chairman. I think I have lost it.

Mr. STUDDS. The paragraph begins: "H.R. 188 would remove the Little Sandy Hunt Club easement land."

Mr. SPEAR. Mr. Chairman, what that says is that we do not believe that the Little Sandy issue should be dealt with singly. There should be no individual fixes. If there is a problem, as determined by Congress, in the approach—and we do not think there is—then Congress should deal with the procedures on a broader sense, and not just deal with individual fixes.

Mr. STUDDS. I mean, that is the translation, then, of the last sentence of that paragraph?

Mr. SPEAR. Yes.

Mr. STUDDS. Mr. Collins, let me try and restate, for the record—we are relatively simple-minded around here, as you may have heard—what I believe are your key objections to the transfer of the easement to the Service.

First, you believe that the easement was conveyed without adequate public notice and participation. Second, you believe it was undertaken for the wrong motive, that is, to frustrate your ability to provide water for East Texas. Is that a fair, general statement?

Mr. COLLINS. Yes, sir.

Mr. STUDDS. Mr. Spear, how do you respond to that first point, the allegation that the process was unfair? What do your procedures require you to do, and what did you do in this case to take the views of the public into account prior to accepting the easement?

Mr. SPEAR. Mr. Chairman, as the first part of my testimony points out, the allegations that people were unaware of what we were proposing to do in East Texas is certainly not true. We put out a concept plan. There were meetings. There was a lot of awareness of the general interest of the Fish and Wildlife Service in East Texas.

Then we got to the point of an easement on Little Sandy, and I think maybe the difference of opinion comes down to the role of NEPA, and how NEPA works. We feel that you notify people of a proposal, and that you inform and you invite public comment with a Draft Environmental Assessment. That is the purpose of a Draft Environmental Assessment. A lot of the complaints are that we did not tell everybody what we were doing prior to the Draft Environmental Assessment.

That is correct, to some extent, although there were a lot of people who were aware. But we did not make a point of informing all of the possible organizations prior to a draft. We figured the draft EA would do that, and we identified a conflict with water projects in the draft, inviting comment and concerns.

The Sabine River Authority expressed those concerns by coming over and seeing us, asking for an extension of time and asking for a public meeting, both of which we granted.

In other words, we feel that we went through a rather extensive process of informing the public, and later collecting data and listening to the public, before we made our decision.

Mr. STUDDS. Mr. Collins, do you wish to respond to what he has said?

Mr. COLLINS. I would certainly appreciate the opportunity.

Mr. STUDDS. Go ahead.

Mr. COLLINS. Thank you, sir. In September of 1986 was the first time, as I said, that we had heard anything about this easement, and none since they said they met and took care of the water problems in the assessment. They had not contacted the Texas Water Development Board. They did not contact the Teas Water Commission, and did not contact us. They had not even advised a sister agency, the Bureau of Reclamation.

I think you will see the concerns, in my statement, that the Bureau of Reclamation had at the time about this process, and nor was the Corps of Engineers advised. I think you will also see where the Corps of Engineers had a problem with the process.

We felt like that since this was a precedent-setting action dealing with a water-resource project, that the least they should have done was prepare an Environmental Impact Statement. That is basically what our lawsuit is about. They should have at least gone through that process, where everybody would have had an opportunity to comment. During the process of doing the Environmental Impact Statement, we would have had an opportunity to show the need and the reasons that this project was needed.

Mr. STUDDS. I do not want to do this indefinitely, but Mr. Spear, do you want to respond to that?

Mr. SPEAR. Yes. I do. It is correct, we did not resolve the issues of the conflict in the Draft Environmental Assessment. The purpose of the draft was to identify the conflict, indicate what we were proposing to do, and then get comment. It was during that comment period when we got the views of those various agencies. Then we had the public hearing, put together the information, and made our decision.

We do not feel the point of a Draft Environmental Assessment is to resolve all the issues, as if you have finished your work. That is why it is a draft.

Mr. STUDDS. Did the other interested, or potentially interested Federal agencies—the Corps, the Bureau of Reclamation—participate at any stage, or offer their views?

Mr. SPEAR. They participated after the draft. The Bureau of Reclamation had been aware, at their Austin level, of the proposal. The Corps of Engineers—which I think he has correctly identified—was not notified in advance.

The Corps of Engineers was not specifically involved in the Middle Sabine. The Bureau of Reclamation was involved because of the Big Sandy project which is nearby. There was interaction between the possible use of the Little Sandy as part of the mitigation for Big Sandy. So there had been that discussion.

Mr. STUDDS. The Bureau of Reclamation and the Fish and Wildlife Service have the same boss, do they not?

Mr. SPEAR. That is correct.

Mr. STUDDS. It is unlikely, although I assume not impossible, that he would speak with two different voices, at least at this time, at this level, given the identity of the boss. Or there was some sugges-

tion earlier, that if we called the Bureau of Reclamation in here we might have heard something different.

Mr. SPEAR. Well, as I say, the testimony I read today represents the views of the Administration and all of Interior.

Mr. STUDDS. Would you respond to something else. Mr. Collins, twice at least, has referred, I believe, to what he calls the "precedent-setting" nature of this case. In your judgment, does it set a precedent, and, if so, of what kind?

Mr. SPEAR. From our point of view it did not set a precedent. I have people on my staff who work for the Fish and Wildlife Service throughout the country. This was a relatively routine type of action, to work out easements, to accept donations. So, from the perspective of the people working on the issue, they look at it from a national basis—there was no precedent here.

I think from the point of view of East Texas, or even Texas as a whole, this was new. I think this is what caught some people off guard. So from that perspective I understand the concern about precedent from a local level.

Mr. STUDDS. Mr. Sharp, we received a letter supporting H.R. 188 which says that the conservation easement was conveyed simply because—and I quote: "A group of wealthy men wanted to preserve for their members the exclusive right to hunt on the property forever."

That clearly gets to the second point in Mr. Collins' testimony, that the conservation easement was given not for important environmental reasons, but essentially to preserve a relatively narrow private interest.

I assume you would like to comment on that.

Mr. SHARP. Yes, sir. As I said in my testimony, the Little Sandy has had that property since 1902. We have not changed it at all, and we do not want it to change. It is unique. You know, it has always been just like that since we have had it, and, no, I do not think that—that is the reason we had been approached, I understand, earlier. Some time in 1985 there had been some discussion about the easement. So it was discussed with us, I understand, and I was not present, nor a member of the board. It is my understanding that it was discussed before any of us ever knew anything about that (the proposed reservoir).

Mr. STUDDS. All right. Mr. Sharp and Mr. Spear: Do you both agree that the sole reason this conservation easement was offered and accepted was that the property in question was potentially subject to seizure by the Sabine Basin Authority for the proposed dam?

Mr. SPEAR. I do not agree with that at all. The reason this easement was accepted was to protect 3,800 acres of some of the best bottomland hardwoods, if not the best bottomland hardwoods, in Texas.

Mr. STUDDS. Mr. Sharp?

Mr. SHARP. I would agree with Mr. Spear. Like I said, this property has been in its pristine state for nearly 100 years.

Mr. STUDDS. Mr. Collins, it was not directed to you, but do you wish to respond to that?

Mr. COLLINS. Yes, sir. I know that in some studies that were made by the Texas Parks and Wildlife, one of their biologists said

there was no reason—and this was back in 1983—in doing the work for the U.S. Fish and Wildlife Service—there was no reason to acquire, or to try to get this property under U.S. Fish and Wildlife Service because it would remain as is in the Club. And then also, in 1985, Mr. Ned Fritz, on May the 25th, sent a letter to the Club, that one of the problems with this property was—he said it was threatened by inundation by the Waters Bluff dam project of the Sabine River Authority. This dam was not yet authorized, however, he said. So, you know, we certainly felt like it certainly speeded up the easement being conveyed to the U.S. Fish and Wildlife Service by our actions of announcing that this project was possible.

Mr. STUDDS. Mr. Spear, Mr. Collins contended in his testimony—I think his oral as well as written—that mitigation requirements for the reservoir would have been an appropriate alternative to the easement acquisition, and that an acceptable compromise could have been achieved, which would have recognized the goals of both the Service and the River Authority, except that the Service refused to discuss such an approach.

What is your response to that suggestion?

Mr. SPEAR. Mr. Chairman, it is almost impossible to mitigate the loss of 3,800 acres of bottomland hardwoods of the quality we have here. We did discuss the option you mentioned, and we explained the problems of a mitigation site at the upper end of a reservoir. First of all, you may already have some bottomland hardwoods there, so you are not gaining anything. Second, to manage and produce bottomland hardwoods is not that easy. If you are successful you must wait, perhaps a 100 years or more, to recreate the quality of what was already there.

This is not the same sort of mitigation that you can do to recreate a marsh. Some of that is possible, although difficult, but you can do it in a few years. Recreating bottomland hardwoods is essentially a century-long ordeal.

Mr. STUDDS. One final question, as I have taken more than I should have, in time. To any of you, or all of you: Assume, for the moment, that our primary objective is to try as best as possible to reconcile the interests of water development and those of conservation, and that neither should necessarily control at all times.

My question is: Do we have the procedures in place for resolving that conflict and for achieving that objective, or is it necessary to pursue another course such as that proposed by 187, or some other course?

Are we equipped to deal with the inevitable inherent conflict of which this case is an example, or do we need other procedures for dealing with that? Any and all want to respond? Mr. Collins?

Mr. COLLINS. Yes, sir. I would like to respond to that, sir. I think our Bill 188 would take care of that problem. It would get it out of Congress and return it to the Texas Water Commission. They are well-equipped—as you will learn later—to take care of resolving these problems on a State level. The Texas Water Commission will look at the environmental problems and the mitigation. They will look at the water needs and determine on a State level whether or not this project may be built or not. We have to get a permit. We cannot build this particular project unless the State allows us.

I would like to have one further comment about the pristine nature of this particular 3,800 acres. It was so pristine that the club actually built between a 600-acre to a 1000-acre lake themselves on that pristine area. So you know, sometimes you wonder what uses are being made of that particular property.

But I think the procedures are here, if H.R. 188 is passed. It will get it back to the State level, where this problem should be resolved.

Mr. STUDDS. Let me just say before I go to the others, that when I refer to the "existing procedures" I did not mean to suggest that it would be normally the Congress that would resolve these things. This is not something that would normally be before us at all.

Either Mr. Sharp or Mr. Spear.

Mr. SPEAR. Mr. Chairman, I think too little is perhaps taken notice of the existing checks and balances that are in the process now—first of all, the NEPA requirements that exist.

Second, while I signed the Finding of No Significant Impact, and made the decision not to write an EIS, I could not accept the easement. I could not accept a donation over 40 acres. That must go to Washington.

Except for donated properties, Congress is involved in appropriating the funds for, in essence, all Fish and Wildlife Service acquisitions, and those appropriations almost always specify an area.

The Congress has the opportunity, under existing procedures, to see all actions, either directly through appropriations, or indirectly through the Migratory Bird Conservation Commission. The exception is donations, and donations of over 40 acres have to come to Washington and be approved by a policy-level official, the Director of the Fish and Wildlife Service.

I think there are lots of opportunities within the system for proper checks balances. Finally, I think that even in this situation the controversy, even in the East Texas situation, is blown out of proportion to what it actually is.

We have a 250,000-acre goal. Sixty-five thousand acres of that is very likely to be found in Oklahoma. That leaves 185,000 in Texas. We are already looking at projects involving something like 80,000 acres. To some extent, they might have some conflicts with water projects.

I think that in each of these cases the existing procedure has a chance to weigh the immediacy of the water needs, has a chance for the public input, and has a chance for decisions to be made at various levels in the Administration. But regardless, almost all cases will be brought back to Washington—not decisions made at the local level—for a policy-level oversight review.

I think there are a lot of checks and balances in the existing procedures, and basically, they are satisfactory.

Mr. STUDDS. Very well. The gentleman from Virginia.

Mr. BATEMAN. Thank you, Mr. Chairman. I am sorry I was not here to hear all of your statements, and therefore some of the things I want to inquire about may have been covered.

But I have just gone through a situation in my own district where a political subdivision in need, in a very short-term concept, of additional public water supply, has had a permit for an impoundment granted by the Corps of Engineers, only to have it

vetoed at the instance of the Environmental Protection Agency and/or Fish and Wildlife Service.

So I am a little sensitive on the subject that we are addressing today. I want to inquire as to whether or not, if this were not an instance of a donated easement or something to Fish and Wildlife Service, would there have been a requirement under existing law for a Section 404 permit from the Corps of Engineers, and if there were such a requirement and the Corps of Engineers elected to grant it, would there have existed a veto power on the part of EPA, or Fish and Wildlife Service, or any other agency?

Mr. SPEAR. Under the land acquisition procedures, whether or not it is a donation or an acquisition, 404 would not be involved.

Mr. BATEMAN. Would not. Why?

Mr. SPEAR. Because we are not dredging or filling in the public waters. In other words, we are just simply acquiring land. If the club or if we actually owned a property and needed to go into the public waters and dredge or fill, then we would have to seek a 404 permit, the same as anybody else.

But the acquisition of land per se does not require a 404 permit.

Mr. BATEMAN. Well, I am not talking about the acquisition of land. I am talking about whether or not the land can be disturbed in a way which would result, through engineering—either dredging, filling or otherwise—in an impoundment of the area?

Mr. SPEAR. Under the terms of this particular easement, it is a nondevelopment easement. In other words——

Mr. BATEMAN. I am not talking about the easement. My question is premised on an hypothesis that there was no donation of land here, and whoever owned the title to the land, free of any easement such as here, chose to use it to meet a public water-supply need. Would they have been required to get a permit from the Corps of Engineers, and if the Corps of Engineers to give it, could EPA, or somebody like Fish and Wildlife Service say no, Corps of Engineers, we are not going to let you do that?

Mr. SPEAR. I understand the question now. The Fish and Wildlife Service has no veto per se over 404 permits. The EPA does, under section 404(c).

Mr. BATEMAN. Leaving aside the donation of the easement by the club to the Fish and Wildlife Service, as to this track of land, and in terms of a contemplated or a proposed use for water-supply purposes, would EPA have had a veto power, had the Corps of Engineers seen fit to grant a permit?

Mr. SPEAR. Yes.

Mr. BATEMAN. And the Corps of Engineers had the authority, or has the authority under existing law, to have required a permit?

Mr. SPEAR. Yes. As a matter of fact, if the Sabine River Authority builds a dam, whether it is Waters Bluff Dam, or any dam, they will have to get a 404 permit.

Mr. BATEMAN. And would EPA have the right to veto a decision by the Corps of Engineers to grant that permit?

Mr. SPEAR. Yes.

Mr. BATEMAN. I am intrigued by a finding of "no significant impact" that was made. Whether a permit should be granted, whether an Environmental Impact Statement, the full statement should have been made, I am not passing judgment on, or what the

conclusions stemming from one should have been. But it is passing strange to me, that you could take an area of this size and inject into the equation the potential loss of a very important water resource, and say that acceptance of this donated easement has no significant impact. I just do not understand that.

Mr. SPEAR. We based the decision——

Mr. BATEMAN. Now what is your measure of when something does or does not have a significant impact?

Mr. SPEAR [continuing]. We based our decision of "no significant impact" on two factors. First of all, the maintenance of a refuge—acceptance of the easement—does not change the character of the land. In other words, there are no environmental consequences of doing that.

And second, we disagreed with the Sabine River Authority on the need for this specific water project, considering the other alternative water projects that are potentially available, and that this in fact was the only way of meeting the potential demands.

Mr. BATEMAN. Well, I cannot sit here and pass judgment, that you were more correct in your analysis than was the Sabine River Water Authority, but I find it a little bit difficult to say that that is a judgment that you necessarily are entitled to resolve by coming to a conclusion that acceptance of the donation has no significant impact. It had one hellish impact, if you are the Sabine River Authority and you happen to believe it is the most viable source of water.

Mr. SPEAR. One of the problems the Sabine River Authority has is that it cannot build reservoirs outside of its boundary, of its watershed. Those are other river authorities, not that far away in Texas. Texas is divided into many river authorities.

We were allowed the opportunity to look at water projects that could be built in adjoining basins, that could potentially serve the needs in the Sabine River Authority Basin.

The Sabine River Authority must look within its own basin, and so has a smaller perspective that it can examine.

Mr. BATEMAN. Well, it occurs to me that you are sitting there as the arbiter of things that are of inordinate importance to a lot of social and economic and environmental concerns, without any necessity of anyone else being assured of an input, and certainly no way to control the result, and in terms of it being a result that does take into consideration all factors, not just wildlife conservation, as important as that is.

Mr. SPEAR. One of the agencies or organizations we must consult with and get opinions from is the State of Texas. From the State of Texas, we got a statement that says, "Here's our view. The Water Development Board and the Water Commission oppose and the Parks and Wildlife Department support."

In other words, the State of Texas allowed—as we will see here today—two different views to come forward, and therefore sent a very clear signal to us that it was not so significant an action that we were taking that the Governor must weigh in and make a decision between conflicting organizations within his own State.

Mr. BATEMAN. Well, I do not know. Quite frankly, what you just said comes through to me, that you perceive that the State of

Texas had given you a window of opportunity to do whatever you wanted to do.

Mr. SPEAR. That is correct.

Mr. BATEMAN. And I am not particularly ameliorated of my concern, that therefore, the net result is that something of this significance to this area is really determined with almost a tunnel vision to one consideration, not to all considerations.

And I do not quarrel with you, that given the latitude to do it, you are going to decide it on the basis of "fish and fowl," and wildlife, which is your charge. But I am not sure that that really equates to the public interest, if that is the only, or is the driving consideration to the exclusion of any other considerations.

Mr. SPEAR. Well, my responsibilities certainly focus on fish and wildlife.

Mr. BATEMAN. With which we have no quarrel with.

Mr. SPEAR. Yes. But I——

Mr. BATEMAN. I have no quarrel with you. It ought to be.

Mr. SPEAR [continuing]. But I have a responsibility, I think to some extent, that goes beyond fish and wildlife, and it is questioned whether or not I exercise it that way. But had I found and had I seen that there was clearly a problem with water development, I think I could have exercised the judgment not to accept that easement. I was convinced, and remain convinced, that there was not a problem of water development in the foreseeable future serving the needs of that area. Therefore, I took the action because I felt that we were not going to have any thirsty children in the Sabine River Basin in the foreseeable future.

Mr. BATEMAN. Well, upon a more extensive evaluation of the proposition, from perspectives that are different than your primary concerns, if it became apparent to you, or to Fish and Wildlife Service, to the Department of the Interior, that there was, indeed, an egregious water supply problem shaping up for the people of East Texas, and this donated easement was going to be an obstruction to the most viable solution to those problems, what could you, what could anybody do about it, save for an Act of Congress?

Mr. SPEAR. An Act of Congress is required. What I could do, and would do, under the circumstances you describe, is recommend to my superiors that an Act of Congress be sought.

Mr. BATEMAN. Well, I take it you remain unpersuaded that the water supplies needs pointed to, or claimed by the Sabine River Authority are not really genuine or certainly not overriding?

Mr. SPEAR. I think they will be overriding if that situation comes up. However, it is far from coming up at this point and I am very unconvinced of the needs.

Mr. BATEMAN. Well, when what situation comes up?

Mr. SPEAR. Well, when the situation arises that you earlier described of dire emergency, and where true evidence exists that this project is needed.

Mr. BATEMAN. Within what time frame would you have to demonstrate that there was a need or desirability for further water resources that this area was critical to solving? A 5-year time frame, or 10 years from now, or at what point?

Mr. SPEAR. The State water plan looks ahead 50 years. This project was not on the State water plan. Other means are identi-

fied in the State water plan to meet these needs. Other projects in that local area have since been either deferred, abandoned, or actually voted down by the local people.

Mr. BATEMAN. Is there someone here who is going to address the current position of the State of Texas?

Mr. STUDDS. Yes. There are several people who will address all of the positions of the State of Texas.

Mr. BATEMAN. Well, I think that will be useful, certainly to me, because I do not want to get involved in an intra-Texas squabble here.

Mr. STUDDS. You are. Deeper by the minute.

[Laughter.]

Mr. BATEMAN. Well, I will suspend, and listen, with interest, as to why this lack of a coherent voice that we are accustomed to hearing from the good people of Texas.

Mr. STUDDS. I thank the gentleman. Let me just observe, again, that we really have two questions before us, as reflected in the two pieces of legislation proposed by Mr. Hall. One is specific to the judgment exercised in this case, and the other is far broader, more general with respect to the procedures by which these judgments are made on a national basis, and I would just observe that Mr. Spear, the authority under which he acts, and the criteria which he uses to make his judgments are set forth in statutes enacted by this Congress.

The gentleman from New Jersey is next in the obscure order of Subcommittee seniority.

Mr. HUGHES. I have no questions, Mr. Chairman.

Mr. STUDDS. The gentleman from Texas. Mr. Ortiz.

Mr. ORTIZ. Thank you, Mr. Chairman. I have a question now for Mr. Spear. During your testimony you said that this area is one of the highest-quality bottomland hardwoods forest sites in the State. How many such areas do we have in the State like this?

Mr. SPEAR. We identified in our concept plan—the number escapes me—some 60 sites.

Mr. ORTIZ. Sixty?

Mr. SPEAR. Sixty-some sites. We asked Dan Lay, a former employee of the Texas Parks and Wildlife Department and an expert on the bottomland hardwoods of East Texas, to go out and survey these sites. He did that over a couple-year period.

We finally came up with a priority list. We put them in five different categories, and we came up with a list of sites in the top two categories that are possible for purchase. As a matter of fact, most of our emphasis will be in the priority one sites.

In other words, while we identified a lot of sites, and they are shown as conflicts on some of these maps, we identify in our own document that those are lower priorities and are not likely projects. In other words, our own study dispensed with some and focused on the top ones only.

Mr. ORTIZ. Then my next question is, how many of these 60 sites would come under a jurisdiction such as the Water Authority or any other agency such as the one that we are discussing today?

Mr. SPEAR. There are 10 conflicts with priority one sites, and six conflicts with priority two sites.

Mr. ORTIZ. You also mentioned priority one. What is the difference between priority one and the others? Can you go into that a little bit for us.

Mr. SPEAR. I do not have those readily in front of me.

Mr. ORTIZ. You could submit them for the record, if you please.

Mr. SPEAR [continuing]. We have a book which describes and lays out all the priorities, and identifies the sites.

[The following was submitted for the record.]

The Category 3 Bottomland Hardwood Protection Plan for Texas, published in May of 1986, describes the criteria utilized in evaluating bottomland hardwood sites and describes the six priority categories in which these sites have been placed.

Five criteria utilized in evaluating the sites: (1) Hydrological regime (i.e., presence of beaver ponds or other permanent water sources, frequency and duration of flooding, etc.); (2) Habitat diversity and quality (in number of types and number of woody, subcanopy, and herbaceous species); (3) Waterfowl utilization and production; (4) Degree and imminence of threats; and (5) Presence of Federal endangered or threatened species and State species of special concern.

Utilizing these criteria, the sites were placed in six priority categories: (1) Priority 1—excellent quality bottomlands of high value to the key waterfowl species; (2) Priority 2—good quality bottomlands with moderate waterfowl benefits; (3) Priority 3—excellent quality bottomlands with minor waterfowl benefits of small size, lack of management potential, or other factors; (4) Priority 4—moderate quality bottomlands with minor waterfowl benefits; (5) Priority 5—sites proposed for elimination from further study because of poor quality and/or no waterfowl benefits; and (6) Priority 6—sites recommended for future study.

Mr. STUDDS. If the gentleman—forgive me, just for a moment.

Mr. ORTIZ. Sure. I yield, Mr. Chairman.

Mr. STUDDS. The Chair is informed that one of the witnesses on the second panel has to leave in less than five minutes, and if the gentleman would not mind forbearing, we are going to extend him the courtesy. The rest of the panel can remain in place.

General MORRIS. Mr. Chairman, I believe that the situation is somewhat changed.

Mr. STUDDS. Oh, you changed?

General MORRIS. My plane is at 4:00 o'clock.

Mr. STUDDS. Very good. Thank you. I apologize. Go ahead.

Mr. ORTIZ. He can submit the information for the record, Mr. Chairman.

Mr. ORTIZ. Another question that I have for Mr. Collins now is that you mentioned something about setting a precedent. How many other jurisdictions, such as yours, would be affected?

Mr. COLLINS. According to the Texas Water Development Board, out of the 65 sites in Texas remaining to be developed, there would be 27 of those planned reservoir sites affected if the Fish and Wildlife Service can do the same thing that they have done on Waters Bluff.

It would affect 75 percent of the future supplies that can be developed in the State.

Mr. ORTIZ. And these are 27 sites throughout the State of Texas?

Mr. COLLINS. Yes, and most of them are in the eastern part—the Trinity, the Brazos, the San Jacinto, the Neches, the Sulphur, and of course other sites on the Sabine.

Mr. ORTIZ. Thank you. Thank you, Mr. Chairman. I have no further questions.

Mr. STUDDS. The gentlelady from Washington.

Mrs. UNSOELD. No questions, Mr. Chairman.

Mr. STUDDS. The Subcommittee will extend the courtesy of questioning to the author of the legislation, the gentleman from Texas, Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman. Mr. Spear, you have stated that Congress provides the funds, and their input is necessary. Why not confer with a Member of Congress when something like this involves their district? Apparently Mr. Bateman learned through the papers, belatedly, of his problem, and I think you notified me by sending me a copy of your draft. It was obviously prepared prior to July of 1986 yet we did not get it until some time in September of 1986.

If Congress is so important to you, why didn't you talk to us?

Mr. SPEAR. I think that was an unfortunate oversight in the preparation of that draft, but we should have done that.

Mr. HALL. The actual facts are that you followed the procedures but you ignored the comments of the people, didn't you?

Mr. SPEAR. No. That is not the fact.

Mr. HALL. Well, didn't the cities and local municipalities all object to this? And didn't even the Corps of Engineers question your policy, and aren't they a part of the Administration?

Mr. SPEAR. The balance we had to make was between——

Mr. HALL. Just answer my question.

Mr. SPEAR. Well, I did answer it. We did not ignore the information.

Mr. HALL. Well, let's see what you did. You have testified that you talked to three people. One of them was the Water Development Board, was it not? When you made your decision you said three, and then two of them indicated that they were opposed to you. The third one said that—the Parks and Wildlife, or the Fish and Game Commission of Texas agreed with you?

Mr. SPEAR. That is correct.

Mr. HALL. Your "little brother" in Texas agreed with you but the other two disagreed, didn't they?

Mr. SPEAR. That is correct.

Mr. HALL. And the Water Development Board provides a master plan for planning for water in Texas, do they not?

Mr. SPEAR. That is correct.

Mr. HALL. Are they almost as important as Parks and Wildlife? Recreation?

Mr. SPEAR. Well, one of the pieces of information we used is that Waters Bluff was not on that master plan.

Mr. HALL. Well, may I ask you: How about the Water Development Commission? They handle the permitting. They disagreed with you, didn't they?

Mr. SPEAR. That is correct.

Mr. HALL. And you made that decision almost on your own, using your recommendation, didn't you, sir?

Mr. SPEAR. I made the recommendation to accept the easement.

Mr. HALL. Now you have also said here that you are representing the Administration's view, and all of Interior. That was what you said just before we left to go vote.

Isn't it a fact that the Bureau of Reclamation wrote to you, and that they, too, are an entity right here in this city, with areas in

the Southwest Division. They wrote to you with dismay about your actions?

Mr. SPEAR. Yes, they did write to me at that time.

Mr. HALL. So you do not really represent their views or their policies, do you?

Mr. SPEAR. Well, when we come to testify we review the information within the Department and make a Department-wide decision, and that was being done up until moments before I arrived here. What I have brought with me today is the position of the Administration.

Mr. HALL. Well, there is a lot of talk about what you know and when you became aware of it. Let's begin with the Bureau of Reclamation.

They apparently found out about it about the same time I did, and they wrote to you. You are the regional director?

Mr. SPEAR. That is correct. sir.

Mr. HALL. They wrote to you on September 29th of 1986, and said, "While we did not receive the Draft Environmental Assessment and decision document, proposed land protection, Little Sandy Hunting and Fishing Club easement from your office, we nevertheless feel compelled to provide comments. This project could have serious adverse effects on the ability of the Sabine River Authority to meet the future needs of the people within the region."

Did you just discard that?

Mr. SPEAR. We did not discard it. We read it, and analyzed——

Mr. HALL. And ignored it like you did the people down there in Texas where you held the hearings. Isn't that a fact?

Mr. SPEAR. I do not feel that we ignored the information we had.

Mr. HALL. Well, at any rate, you checked with three of them and one of which sets a master plan for water and the other handles the permitting. You checked with them and they were two to one against you, so you felt like you really had them going, didn't you?

Mr. SPEAR. [No response].

Mr. HALL. Who else did you talk to about this? Who, in the Little Sandy Hunting Club, did you visit with?

Mr. SPEAR. The contact with Little Sandy Hunting Club was the president at the time, Ronnie Cathy.

Mr. HALL. And when did that happen?

Mr. SPEAR. I cannot remember; I think I have made two trips. My first visit to the club was in December 1985.

Mr. HALL. When did Fish and Wildlife start working with the club toward an easement?

Mr. SPEAR. I believe the first discussions of an easement were in July 1985. I was not involved in those discussions.

Mr. HALL. So you would have to have some preliminary discussions before you would have a real discussion with them. You would need to have all of that before you would even survey the region, wouldn't you?

Mr. SPEAR. We had already surveyed East Texas for the best sites.

Mr. HALL. And when was that?

Mr. SPEAR. In 1983 and 1984. We had already determined that this was "the top site." That is why discussions were entered into,

and that discussion went on at the same time, or perhaps prior to any notification that Waters Bluff Reservoir was under consideration.

In other words, while the Sabine River Authority can raise the issue about when they were notified of our easement, they were aware of the Service identifying that area as a high-priority site for protection. We were not made aware of the position of the Sabine River Authority vis-a-vis the State Water Development Board, Water Commission, until we put out our draft EA.

I would say the draft EA served its purpose, and it brought forth that information.

Mr. HALL. Do you feel like you have more information now than you had when you accepted the easement?

Mr. SPEAR. Well, through all kinds of information, through the litigation process, there is a lot more information I think available now.

Mr. HALL. But you did not coordinate your action with the Sabine River Authority, did you?

Mr. SPEAR. Other than issuing the draft EA, meeting with them, having a public comment period—I mean, a public meeting at their request, and extending the comment period, there was no other coordination.

Mr. HALL. Nor the State water agencies? I am talking about the State of Texas water agencies. You did not coordinate with them?

Mr. SPEAR. They testified at the same public meeting. Coordination. They were involved in the same coordination and public comment process as everybody else.

Mr. HALL. How about the Bureau of Reclamation, or the Corps of Engineers? You did not coordinate with either of them, did you?

Mr. SPEAR. There was little if no coordination with the Corps of Engineers. The Bureau of Reclamation was aware of discussions with Little Sandy, perhaps as early as the summer of 1986, June 1986, in their Austin office, which was, unfortunately, not their regional office in Amarillo.

Mr. HALL. You notified the State clearinghouse twice about this easement, didn't you?

Mr. SPEAR. I do not remember whether it was once or twice.

Mr. HALL. Do you deny that you notified the State clearinghouse twice of the easement proposal, but stated that it would not conflict with any State or local plans?

Didn't you tell them that?

Mr. SPEAR. Yes. We did.

Mr. HALL. Explain that to me, then. It did conflict with State and local plans. They are here. It is obvious it conflicted with them. No one agreed with you but the parks and wildlife people down there.

Mr. SPEAR. The State plan did not have——

Mr. HALL. And Little Sandy. I understand the situation at Little Sandy. They are not just like a poor old homeowner that has to look back over his home place, and walk off of it. He is subject to eminent domain. But you put these people outside the reach of it.

Mr. SPEAR [continuing]. The State plan did not have the Waters Bluff project on it. The local plan had not been approved. So we

were put in a position—at what stage does a local plan become official?

Mr. HALL. Do you know how long this entity had been looking at this area?

Mr. SPEAR. No. I do not.

Mr. HALL. Do you know how many times they had surveyed it? How much work they had put into it? How many applications they had filed? Did you even care?

Mr. SPEAR. The key to us was what the overall water situation was in the basin, and the value of it to waterfowl on a nationwide basis.

Mr. HALL. I thank you, Mr. Chairman. I pass the witness.

Mr. STUDDS. May I just quickly ask two questions of fact for my own edification. I think it was Mr. Collins, in his testimony, who referred to "public expense" in connection with the administration of the refuge or the conservation easement.

Is there, at this point, and will there be an ongoing public expense of any kind, Mr. Spear?

Mr. SPEAR. A very small one. We do visit the area to check if the conditions of the easement are being maintained. So far, our visits have been few. There have been no changes in the area, which is what we desire. So we are talking of, you know, perhaps a few thousand dollars.

Mr. STUDDS. So you will not be managing it in any traditional sense of a refuge?

Mr. SPEAR. No. We have offered technical assistance. If questions come up about how to maintain bottomland hardwoods we will try to assist, but they are going to manage it.

Mr. STUDDS. Mr. Sharp, does Texas have either a local or a county, or a State property tax?

Mr. SHARP. Yes, sir.

Mr. STUDDS. Are you folks exempted from that by virtue of having granted this easement?

Mr. SHARP. No. We pay the taxes.

Mr. STUDDS. You continue to pay your full share of taxes, whatever that might be?

Mr. SHARP. Yes.

Mr. STUDDS. I thank you all. It was a long time.

Mr. HALL. Mr. Chairman, could I ask one additional question.

Mr. STUDDS. Very quickly, if you will. We are taking time away, I am afraid, from panel number two.

Mr. HALL. I will be very quick. Mr. Collins, and Mr. Spear—either one of you can answer—what are the facts with regard to whether or not this is the first project that was not subordinated to the public interest for future domain in the United States?

Mr. COLLINS. To my knowledge, this is the first time that an easement has been accepted in a public works project of this kind.

Mr. HALL. Do you have other evidences or instances, Mr. Spear, to contradict what Mr. Collins has testified to?

Mr. SPEAR. To the best of my knowledge, there has been no other ones of this nature. There are other water projects always being discussed throughout the country, but I think it is probably a true statement.

Mr. HALL. So if your easements are uniform, you used other than a normal easement for the acquisition of Little Sandy?

Mr. SPEAR. No. No. The easement document is a fairly standard one. You know, each one of them is somewhat different to reflect the circumstances. But the acceptance of an easement and the nature of the document is very typical of what we have throughout the country, particularly in California, as I mentioned in my opening statement.

So it is not the document, per se, that is any different. I think what is being referred to by Mr. Collins is that the identified conflict, if you will, between the proposed project and the acceptance of a donation, is the first of its kind. I do not argue with that.

Mr. HALL. I will ask this as my last question. It is my understanding that you are silent on 188. You do not have any position on that?

Mr. SPEAR. That is correct.

Mr. HALL. That is the local bill for Wood County.

Mr. SPEAR. That is correct.

Mr. HALL. Then is it a fact that for these people who have a public trust in providing water for the future, that they are preempted by the acceptance of this easement, where the others across the country, in the United States, are not. Is that the difference in the two?

Mr. SPEAR. I am sorry. Could you say that again.

Mr. HALL. Yes. The Sabine River Authority, the Water Commission, and others, who have the duty to the public trust, of providing for future generations—in this instance, in this easement, in this taking, are they preempted by the acceptance of this easement? In the other takings across the United States is there a different situation? They are not preempted?

Mr. SPEAR. They would be preempted in those other circumstances if they had a similar situation to Mr. Collins' at the Sabine River Authority, and they wanted to build a water project.

Those basins, or drainage boards, or whatever might be involved that wanted to do what Sabine River Authority wants to do would have the same prohibitions as well. So there is nothing different about this one.

Mr. HALL. I thank you. Thank you, Mr. Chairman.

Mr. STUDDS. We thank you, gentlemen, very much. Mr. Spear, are you able to stay on to offer the Department's opinions?

Mr. SPEAR. Yes, sir.

Mr. STUDDS. This is your reward for having such an easy time in the first round.

We will go to the second panel, and if the gentlemen and lady on that would come forward, we will proceed. As you are shifting, let me just counsel you. We went a good deal longer than I had anticipated in panel number one, and I apologize to you for that. I would have wielded a sterner gavel, but I wanted Members to have a chance to air the questions.

But at this point time is really impinging on us, and I am going to insist that the oral statements be no longer than five minutes, and I really will, with great hesitation and regret, ask you to conclude if you are going over five minutes. That is by, not just Texas

count, but standard count. We are going to have a long time on our hands in any event, and we may have to limit questions at the end.

We will certainly start with the gentleman who has a time problem more than the rest of us. General Morris. We will go out of sequence with this one instance. General Jack Morris, Chairman of the Water Resources Congress. General Morris.

STATEMENTS OF A PANEL, CONSISTING OF GENERAL JACK MORRIS, CHAIRMAN, WATER RESOURCES CONGRESS; TOM DONNELLY, EXECUTIVE DIRECTOR, NATIONAL WATER RESOURCES ASSOCIATION; LARRY McKINNEY, DIRECTOR OF RESOURCE PROTECTION, TEXAS PARKS AND WILDLIFE DEPARTMENT; BUCK WYNNE, CHAIRMAN, TEXAS WATER COMMISSION; AND JANICE BEZANSON, TEXAS COMMITTEE ON NATURAL RESOURCES.

General MORRIS. Thank you, Mr. Chairman. Mr. Chairman, and Members of the Committee, I am J.W. Morris, appearing this afternoon on behalf of the Water Resources Congress. While our headquarters is nearby, our members are found in all sections of the United States, particularly where water is recognized as the chief ingredient to life, livelihood and outdoor enjoyment.

To save time, I will submit the entire statement for the record, and will orally hit the high spots in my following comments.

Mr. Chairman, it is public interest that provides a backdrop for this hearing. In this particular instance it is the Waters Bluff project. The proposed Waters Bluff project lost 3802 acres of its reservoir area when the Little Sandy Hunting and Fishing Club, owners of the land, entered into negotiations with the U.S. Fish and Wildlife Service. This led to granting a conservation easement of the 3802 acres to the Federal Government.

As I understand the conditions, the club is to maintain ownership and exclusive use of the land in perpetuity. Simply stated, when the Fish and Wildlife Service accepted the club's donation of the easement, it seriously impeded development of the Waters Bluff project, while at the same time preserving ownership and exclusive use of the land for Little Sandy Hunting and Fishing Club .

The Water Resources Congress is not here to advocate, or, for that matter, even debate the Waters Bluff project. Our agency is here, however, to express its deep concern over the most unusual, and, in our view, inappropriate procedures used in this case, and the potential effects nationally.

In this particular case, the coordination path between the interested agencies was abandoned, and in effect became non-existent.

On September the 8th, 1986, the Fish and Wildlife Service issued a public notice of a Draft Environmental Assessment covering its proposal to accept a conservation easement from the club.

The Draft Environmental Assessment was prepared without the consultation or coordination with the Sabine River Authority or any other Federal or State agencies.

It contained only a cursory review of the alternatives to acceptance of the assessment, failed to consider the effect of the easement on the Waters Bluff project and overall water needs of the State of Texas.

Comments on the draft assessment drew strong responses, urging that the easement not be consummated because of its adverse effect on development of a much-needed water resource.

The comments also challenged the Fish and Wildlife Service agreement to grant the club exclusive use of the land after the acquisition, as well as a lack of coordination with other Federal agencies. Both the Bureau of Reclamation and the Corps of Engineers oppose the easement. The matter is now in the courts, headed by the Sabine River Authority versus the Department of Interior.

The Water Resources Congress objects to the Fish and Wildlife Service disregard for the fundamental public interest precept which guides, or should guide, the decisions of all Federal agencies.

Every modern law requires the responsible agency to determine the interests of the public in its actions. As an example, new Federal regulations or procedures require announcement, and public review and comment, before adoption.

Furthermore, the Water Resources Congress believes that the environmental assessment should be the final National Environmental Policy Act evaluation of a Federal action only if there are no significant impacts and the judgment of the responsible Federal official making such a decision is not challenged.

The normal procedure when an environmental assessment decision is challenged is to prepare the Environmental Impact Statement and follow the review procedures associated therewith underneath.

Additionally, the Water Resources Congress supports a concept that except for specifically justified situations, land under Federal management is to be made available for public use.

Finally, the Water Resources Congress objects to arrangements between private activities and a Federal agency which bypass and foreclose on the rights and authority of the States. The position of the State Executive and State Governments have always been valued and meaningful in the actions of Federal agencies, especially within the Executive branch of our Government.

In summary, the interest of the Water Resources Congress in this matter extends far beyond the actions of the Sabine River Authority, the Waters Bluff project, or even the State of Texas.

At issue here is a precedent which, if successful, will be attempted throughout the United States to serve special interests rather than the public interest in the management of the Nation's water resources.

The Water Resources Congress endorses Representative Hall's proposed legislation, H.R. 187 and H.R. 188.

I thank you, Mr. Chairman, and Members of this Committee, for the opportunity to appear before you today.

[The statement of General Morris can be found at the end of the hearing.]

Mr. STUDDS. Thank you, sir, and we will certainly understand it, if you have to leave before things are over.

General MORRIS. If there are any questions—thank you, sir.

Mr. STUDDS. Thank you. Mr. Tom Donnelly of the National Water Resources Association. Mr. Donnelly.

STATEMENT OF MR. DONNELLY

Mr. DONNELLY. Mr. Chairman, and Members of the Committee, I am Tom Donnelly, Executive Vice President of the National Water Resources Association.

I appear before this Committee today to express our serious concern over recent actions of the U.S. Fish and Wildlife Service in obtaining the construction easement from the Little Sandy Hunting and Fishing Club in Wood County, Texas.

I have prepared a statement that I would ask be accepted as part of the record.

Mr. Chairman, my prepared statement is a very strong statement, intended to bring attention to a Federal action that sets a dangerous precedent of national proportion.

Members of the Water National Water Resources Association are ardent supporters of State's rights, and this clearly is a States right issue.

These people, the directors of the Sabine River Authority, are not developers. They are public servants. As public servants, they have a public trust responsibility, much the same as you ladies and gentlemen have, and every other elected or appointed official in this country.

These men and women are entrusted with the responsibility of providing a quality supply of water to a growing population. The State of Texas has enacted laws that were carefully crafted to enable these men and women to carry out their public trust responsibilities and still respect the rights of all the citizens of Texas.

Now, along comes the Federal Government, specifically the Fish and Wildlife Service. By accepting this conservation easement, the U.S. Fish and Wildlife Service has abrogated the ability of the Sabine River Authority and the State of Texas to carry out their public trust responsibilities.

By accepting the easement under the conditions that it was offered, the U.S. Fish and Wildlife Service has abrogated the rights of all the citizens of Texas in favor of a privileged few.

In this instance, the U.S. Fish and Wildlife Service has played "fast and loose" with one of the premier environmental laws of our Nation, the National Environmental Policy Act.

NEPA requires that all agencies of the Federal Government shall include in every recommendation a report on proposals for legislation, and other major Federal actions significantly affecting the quality of the human environment. A detailed statement by a responsible official on the environmental impact of the proposed action.

The U.S. Fish and Wildlife Service has clearly failed to take into consideration the effect of its actions on the quality of the human environment. This, in my opinion, is an example of Government at its worst. Mr. Chairman, and Members of the Committee, we urge you not to let this action go unchallenged. Thank you, Mr. Chairman, and Members of the Committee, for allowing me to present the concerns of our Members to the Committee today.

[The statement of Mr. Donnelly can be found at the end of the hearing.]

21-863 0 - 89 - 2

Mr. STUDDS. Thank you very much, sir. Next, Dr. Larry McKinney of the Texas Parks and Wildlife Department. I believe that is the "little brother" to which Mr. Spear and Mr. Hall referred.

STATEMENT OF DR. McKINNEY

Dr. MCKINNEY. Yes, sir. Sir, I would be remiss if I did not say something about the remark. I would have to explain that to my commission. I appreciate the comment, but we certainly do not consider ourselves a "little brother."

Mr. STUDDS. Texas size.

Dr. MCKINNEY. I suppose if we were, we would certainly, considering the relationships we have had recently on a number of matters, we would be the "black sheep" of the family I think, so——

Mr. STUDDS. My concern is that regardless of your size, you brought your suit of armor.

Dr. MCKINNEY. I hope. I guess so.

Mr. STUDDS. Go ahead.

Dr. MCKINNEY. Yes, thank you, Dr. Chairman.

Mr. Chairman, for the record, I am Dr. Larry McKinney.

I am head of the Resource Protection Division for Texas Parks and Wildlife Department. I would like to apologize on behalf of my commission Chairman, Mr. Chuck Nash, who is unable to attend today. There was a conflict with several public meetings which he is chairing, and we could not make it, so, with your permission I will present these remarks.

The Texas Parks and Wildlife Department is the State agency with the primary responsibility for protecting the State's fish and wildlife resources.

One of the primary mechanisms for protecting those resources is through the protection of habitats upon which they depend.

A recent survey performed by the Department revealed that 63 percent of the original forested flood plain communities in Texas have already been lost.

Because the majority of the remaining bottomland hardwoods, the most valuable and diverse of this habitat, is found in the six East Texas river basins, preservation of bottomlands in these areas deserves special priority.

Should all reservoirs proposed in the Texas Water Plan be constructed, including three others that are also being contemplated, East Texas river systems would directly lose 200,000 acres, or 17 percent of its remaining bottomlands.

Indirect losses because of altered flow regimes below these dams could result in significantly increased impacts. My department has, and is working, cooperatively, with the U.S. Fish and Wildlife Service to protect and preserve at least some of these areas, and must have the use of a full range of options including easements, leases, and fee purchases to do so.

The Texas Parks and Wildlife Department fully recognizes the importance of developing water supply reservoirs. However, because of the pristine high quality of the Little Sandy Hunting and Fishing Club lands, and because of the abundance of other reservoirs and reservoir sites in East Texas, alternative sources of water

that would allow the preservation of this area should be considered.

The department does not believe that the enactment of either of these bills is necessary. Certainly, in their present form, they raise a number of concerns which I would summarize with the following comments.

H.R. 187 seems to be intended to avoid conflicts between water development projects and protection of fish and wildlife habitats, particularly bottomland hardwoods.

The department certainly agrees that unnecessary conflicts should be avoided. Unfortunately, remaining bottomland hardwood communities in Texas generally occur in and near stream and river valleys. As a result, conflicts are, in some degree, inevitable.

Recognizing that, it is important that any procedure for resolving these conflicts within either the State or Federal process accord adequate protection to all interests.

The absolute prohibition on acquisition by the U.S. Fish and Wildlife Service pending approval by the legislature of the affected State also seems unnecessary. If warranted at all, existing administrative procedures could more readily be employed to assure a balanced assessment of need and resolve conflicts.

Finally, the broad public access requirements will likely interfere with wildlife protection purposes of the fee acquisition or easement, and should be stricken from consideration.

H.R. 188 is directed at eliminating a perceived threat to one of the many potential water development projects in East Texas. Even accepting, for the purposes of argument, the validity of the proposition that acquisition of such an easement should not be allowed to interfere with the development of a needed and viable water development project, this bill goes too far, and other options should be considered.

The Texas Parks and Wildlife Department appreciates this opportunity to present comments on these matters. The department takes its role as the State's primary advocate for fish and wildlife resources of Texas very seriously.

As our population continues to grow, and conflicts between development projects and dwindling natural resources increase, a balanced and deliberate approach to the assignment of priorities is essential.

Protection of our irreplaceable and indispensable natural resources should not be foregone until the efficacy and desirability of competing development projects have been established and the general public interest has been considered.

Mr. Chairman, I would conclude with the following thought: That in my State, something less than 2 percent of our land and its wildlife habitat is afforded the protection commonly associated with public lands, yet 40 percent of this country's—40 percent of this country's unprotected natural areas are found in Texas.

What this means is that we, both State and Federal resource agencies, must have the ability to work with private landowners over a broad spectrum of options in order to preserve it.

I would encourage you to do nothing that would unnecessarily restrict that ability. I appreciate the opportunity to make these comments and would answer any questions that you may have, sir.

[The statement of Dr. McKinney can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much, sir. The Government of the State of Texas is the source of boundless and interminable confusion to those of us sufficiently benighted to be from somewhere else.

The Parks and Wildlife Department, I assume, is an executive agency of the State Government, is that correct?

Dr. MCKINNEY. Yes, sir. It is overseen by a nine-member commission appointed by the Governor.

Mr. STUDDS. So you are responsible through them to the Governor?

Dr. MCKINNEY. To the Governor. Yes, sir.

Mr. STUDDS. Thank you. We will now go to Mr. Buck Wynne, Chairman of the Texas Water Commission, and would you begin by explaining what the Texas Water Commission is.

STATEMENT OF MR. WYNNE

Mr. WYNNE. I will be glad to, Mr. Chairman. First of all, for the record, my name is Buck Wynne, and I am Chairman of the Texas Water Commission.

Mr. STUDDS. Is that like the Railroad Commission?

Mr. WYNNE. It is somewhat like the Railroad Commission. Yes, sir.

Mr. STUDDS. I am sorry to hear that. We have been very confused by that for a long time.

Mr. WYNNE. In terms of our function, we are a State regulatory agency, and let me just give you a little background on the State water agencies so you can try and understand how we operate at the State level.

First of all, the Water Development Board, which is not represented here today, is the State agency that is responsible for planning and financing water development projects. Water and waste water projects.

They are responsible for developing and maintaining the so-called Texas Water Plan which has been mentioned here today, that identifies future needs, assesses potential environmental impacts on a very general basis, and identifies water development projects that we need to meet those needs on the 50-year planning horizon.

The Water Commission is the State regulatory agency for water. We have four major program areas: water rights and uses; water utilities; water quality; and hazardous and solid waste. We administer Federal programs in the latter two areas.

The program area that we are concerned with today is in our water rights and uses program. In that program, we are the agency of State Government that is responsible for issuing permits for reservoir development.

Mr. STUDDS. And you, too, report, in one way or another, to the Governor, I assume?

Mr. WYNNE. That is correct. I am Chairman of a three-member commission that is appointed by the Governor. I serve as Chairman at his pleasure. So I feel very accountable to the Governor; yes.

Mr. STUDDS. Thank you.

Mr. WYNNE. The Water Commission is required, by statute, to conduct detailed administrative proceedings prior to issuing a reservoir permit. We have not come on to consider any sort of an application for a permit for the Waters Bluff Reservoir, so my comments today will be directed only to H.R. 187. I do not want to make any comments, make a bad record on 188. I do not know very much about the project. It may or may not ever get to us.

However, generally speaking, I think it is safe to say that the legal proceedings that are had before the agency, on a project of the magnitude of a major reservoir project, lasts for weeks, and sometimes even months.

Evidence is presented. Witnesses testify under oath. All is subject to cross-examination. A detailed administrative record is made on the subject of need, impact, and mitigation.

The effort is to balance the competing interests in a major reservoir development project. The three-member commission of which I am the Chairman is the ultimate decision-maker. All of our decisions are subject, of course, to judicial review.

The State Fish and Wildlife Agency, the Parks and Wildlife Department, is a statutory party to all of our proceedings. They are admitted as a party as a matter of right. They participate, I can assure you—and if you ask Dr. McKinney, he will tell you the same thing—very vigorously in those proceedings. We listen very carefully to the Parks and Wildlife Department and we take their recommendations very seriously.

One example of that is in the recent permit that was issued for the Little Cypress Reservoir. 13,700 acre-feet total surface area. It was determined that the project would impact 7000 acres of bottomland hardwood.

At the department's recommendations, at their recommendation, we required a 12,000 acre acquisition of mitigation lands of which 10,000 acres was bottomland hardwood.

The department has legal standing to appeal our decision in a reservoir permit case. They did not, in this case, because their concerns were apparently satisfied.

The problem we have in Texas is that both water and wildlife habitat are growing increasingly scarce, and we are going to have conflict similar to the Waters Bluff controversy in the future.

Much has been made of the fact that the Waters Bluff project is not in the Texas Water Plan. That is true. I have not heard the question asked here today, and I think it might be a good question to ask. What if a project was in the Texas Water Plan, and it was the subject of a conservation easement acquisition? How strongly would that fact figure in the decisionmaking process at the Fish and Wildlife Service?

The fact is that according to our review of the records, 19 of 44 future projects identified as necessary in the State Water Plan overlapped with bottomland hardwood areas identified in the U.S. Fish and Wildlife plan.

So if the Fish and Wildlife Service plan is fully implemented, I think we are going to see continued conflicts of this kind. The question is how are those conflicts going to be resolved.

We feel, at the Texas Water Commission, that we have a good procedure for resolving those conflicts through the State permitting process. We take into consideration all views. All of those who testify do so under oath. They are subject to strict evidentiary standards, subject to cross examination. We have a way of getting at the facts, and we do.

We also have a record of considering all of the interests involved, and I dare say, at least over the last years, since 1985 when we were given this broader authority, most would agree that we have exercised that responsibility carefully and prudently.

I think there is a solution to the impasse. H.R. 187 is a good start. I hope I do not disappoint you by failing to disagree with my colleague from the Parks and Wildlife Department, but I think that the department has made some good suggestions in their written testimony.

I think, specifically, the recommendations on page three of the testimony—I will not go through them in any detail unless you have questions on them—are well-taken, and should probably be followed.

Also, you may want to consider applying the provisions of H.R. 187 to projects identified in a State Water Plan such as the Texas Water Plan.

You also may want to consider making conservation easements subject to condemnation.

These are all things that could be added to the current program, reserve its viability, and yet also preserve the State's traditional role in water resource management and in the reservoir permitting process.

That concludes my remarks, Mr. Chairman, and I will stand for questions at any time.

[The statement of Mr. Wynne can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much, sir.

We go, finally, to Ms. Janice Bezanson of the Texas Committee on Natural Resources, and, obviously, I am going to ask you to explain what that as when you begin.

STATEMENT OF MS. BEZANSON

Ms. BEZANSON. I would be happy to. Mr. Chairman, Members of the Subcommittee, thank you for letting me come.

I am Janice Bezanson. I represent the Texas Committee on Natural Resources which is a statewide conservation membership organization. It has been active in environmental issues in Texas for 20 years.

But I represent a great deal more than our 1000 members. The Audubon and Sierra Clubs, both national and State, the National Wildlife Federation, the Ducks Unlimited, the Sportsmen's Clubs of Texas with 65 member hunting-and-fishing clubs, four statewide organizations, more than a dozen regional and local groups, and two-thirds of the people who testified at the hearing requested by the Sabine River Authority have vocalized their support for this conservation easement.

The only reason for overturning an easement of this type would be if the alternative use for the land—in this case, the reservoir—were really and truly urgently needed.

And it does not matter how many water developers come and say it is needed. The facts make it very clear that this reservoir is not.

The current use for water in this upper basin of the Sabine River is 150,000 acre-feet per year.

The Texas Water Development Board counts the supply for the same region at over 500,000 acre-feet, and their counting is very conservative. Actually, there is probably more like 700,000 acre-feet of water, which is enough to meet the highest case demand projections the Water Development Board has made for this region for the next 50 years.

Further, those demand projections are unusually high because this is kind of an anomalous region. The major water-user there is one chemical industry plant, Texas Eastman, and Dr. Lyle Tishler, who is a consultant with Texas Eastman, and who wrote the methodology that the Texas Water Development Board based these projections on, testified that they could not be applied to this anomalous area without being artificially inflated.

He testified that the industrial water use would be, you know, several times less.

It would be very tempting to say that since this is in Mr. Hall's local area, it is his business. He is the one that needs to give forth the major opinion on this. This reservoir is not just for Mr. Hall's area. I just showed you that there is plenty of water there.

The court documents regarding this make it clear that unless water is exported from this basin, there will be a surplus for the local supply. Much of the water in this reservoir is targeted for the Dallas-Forth Worth area. So we need to take a real quick look at what the water supply situation is in that area.

The Water Development Board has projected 1.2-to 1.7 million acre-feet of need in the next 50 years. This is for the year 2040. They already have—Dallas has, this area has, these cities around Dallas—have existing permits or contracts from up to 30 reservoirs which total 1.68 million acre-feet.

In short, all of that region, they have completely looked at their future needs for 50 years and have completely taken care of it.

If they ever did need any more water, they have six more river basins to choose from, and those river basins each have several sites that could be developed.

So, deciding that Waters Bluff is, for any particular reason, the one that we must develop to meet either the local needs or the wider base needs, is nothing short of silly.

If there ever were a greater need for water in this water, if, you know, half the people in Michigan decided to move to East Texas or something, there are plenty of other ways to get water in this area besides building Waters Bluff.

I have already referred to innumerable, upwards of—you know—20 or 30, or 40 sites we could build a different reservoir on, that would not flood the Middle Sabine Bottoms, our best-remaining hardwood forest.

Downstream of Waters Bluff is Toledo Bend where Texas owns over 1 million acre-feet of water that has been sitting there for 25 years, with only 1 percent of it used every year.

Mr. Collins said the customers fund his reservoirs. Well, they did not fund Toledo Bend. The State of Texas water bonds have, and we are still paying.

He also said that we could not pipe water from Toledo Bend to this region, and yet he is proposing to build an even longer pipeline to take water from Toledo Bend to Houston. He cannot have it both ways.

In addition, there are two reservoirs upstream of this site which, because they are in a slightly drier area, they are very large-capacity reservoirs but they do not have much water flowing through them. They have much less water flowing. Their capacity has not been fully used. So, for a very small fraction of the cost of building Waters Bluff, we could take the water from Waters Bluff and pump it upstream and store it in these existing reservoirs.

Perhaps the most dramatic fact of all having to do with reservoirs is that, actually, we would not get the 300 acre-feet of yield that they are claiming for Waters Bluff. The upper basin would get that much yield, but it would be at the expense of the lower basin. Toledo Bend's yield would be reduced by probably a couple 100 of those 300,000 acre-feet.

So essentially what we are doing is, if you look at the whole basin, upper and lower, we are increasing the whole basin by maybe 3 to 4 percent, at a cost of $300 million or $400 million.

The obvious question to ask is: Well, then why is the Sabine River Authority pushing this so hard? The State of Texas has voted $1.4 billion in tax bonds over the last 5 years.

But Texas is not like a lot of the States in the country. We do have a water planning agency but we do not have a lot of State water control. I mean, they do not go out and build the reservoirs themselves. There is not much coordination.

What we have is, every river in the State has a different river authority on it. There are about 25 river authorities. In addition, we set up utility districts. We set up municipal water districts. We set up municipal utility districts.

We have got so many water entities—we have got 40 or 50 different agencies that can build reservoirs, tax the people, and have eminent domain.

The Sabine River Authority wants to build *their* reservoir because they want the tax dollars to go to *their* agency. They do not want their sister agency, 30 miles away, or 50 miles away, to get the pork barrel instead.

The other bill, H.R. 187, is an outgrowth of this situation. The water industry in Texas does not want to have to compete with other uses of the natural resources. But these are both viable economic uses of the natural resources.

To restrict the Fish and Wildlife Service from meeting its congressional mandate, to put limits on their ability to acquire land for waterfowl, is going to do a tremendous damage to their own future programs. It is giving one resource complete control over another resource.

It is the opinion of the Texas Committee on Natural Resources, and the environmental and hunting and fishing organizations of Texas, that these two bills are not worth the time that the Subcommittee is having to put on them. We urge you not to pass them.

[The statement of Ms. Bezanson can be found at the end of the hearing.]

Mr. STUDDS. Thank you very much. I assume those projections of water need take into account the unusual thirst of Texans.

[Laughter.]

Mr. STUDDS. And you posited the possibility of half of Michigan moving to East Texas. That would certainly lead to unprecedented employment opportunities for interpreters, I would think.

I was just waiting for some commendation from Mr. Hall for my getting through this entire thing almost without the help of interpreters. I am doing very well, I think.

But maybe the reason I asked Mr. Spear so many questions is he is the only one I can understand. I am doing my best.

Let me focus, as I suggested I would at the beginning, in this case, on the more general questions raised by the more general piece of legislation proposed by Mr. Hall.

First of all, for the panel, for any or all of you: Do you agree that our basic objective should be a proper balance between water development and conservation, or should one take precedence over the other? That is an easy starter.

Maybe I should put it this way: Is there anyone who does not agree that our basic objective should be a proper balance between the two? Can we posit that?

Mr. WYNNE. Yes.

Dr. MCKINNEY. Yes.

Mr. STUDDS. Second—and this one we will have some differences on. Do the laws and procedures we now have in place assure us a reasonable balance, or do they stack the deck in favor of one side or another? Is there, in other words, a need for a significant change? Whatever order you would like to go in. Mr. Donnelly.

Mr. DONNELLY. I will try it first, Mr. Chairman. I think the laws, NEPA, Fish and Wildlife Service Coordination Act, all of our environmental laws, are excellent laws, and they do protect the interests of the people of the United States.

I think the problem comes with the way those laws are administered, and that is the case in this instance. I believe that you are finding an agency of Government, and officials or an official in those agencies that have—maybe "misused" is too strong a term—but have not exercised their public trust responsibilities in the way that the law calls for them to exercise that.

Mr. STUDDS. Who else wants to tackle that? Mr. Wynne.

Mr. WYNNE. If I may, Mr. Chairman. I think the substance of the laws—the substance is adequate, but I do find fault, to some extent, with the procedures that permit the Fish and Wildlife Service to acquire conservation easements in the path of reservoirs that are on the Texas Water Plan.

I think the question is who is going to make the decision to go forward with a reservoir project. The Fish and Wildlife Service has a very solemn and important responsibility to serve as an advocate for fish and wildlife resources in the United States.

The Texas Parks and Wildlife Department has the same responsibility in the State of Texas, to serve as an advocate for those resources.

The Texas Water Commission is not an advocate for any particular side, be it the development side or the conservation side of the question. We serve as a judge, if you will.

We have to take both sides into consideration and our actions are, of course, subject to judicial review. I think it is that type of proceeding that is the proceeding to decide whether or not a reservoir project should move forward, not the unilateral decision of a Federal agency, or a State agency, for that matter, that has an institutional mission that is skewed on one side or the other of the equation.

Mr. STUDDS. Ms. Bezanson.

Ms. BEZANSON. In the State of Texas, the water resources industry has made repeated attempts to be given control over the fish and wildlife resources of the country. The Water Commission has called itself the primary fish and wildlife agency on water issues, which ignores the mandate of the Texas Parks and Wildlife.

In the specific hearing which Mr. Wynne referred to, the Little Cypress Reservoir, my organization was a party, I represented them in that hearing, and the question of need for the reservoir was not even on the issues list until I requested that it be placed there.

I do not know of an instance—there may be one or two—where the Water Commission ever turned down a permit. They may not be advocacy but they certainly give their free permission.

Mr. STUDDS. Anyone else want to have a crack at this one? Mr. McKinney? It is not compulsory.

Dr. MCKINNEY. Just briefly, Mr. Chairman. Thank you for the opportunity. I would say that in the last 6 years, not only myself but many others, have made vigorous efforts to incorporate some consideration, what we think is more adequate consideration of fish and wildlife matters before the Texas Water Commission. These matters were addressed in two constitutional amendments for the State constitution, and a sunset review of our department. And as the Chairman of the Water Commission, Commissioner Wynne has stated, there are procedures in place now that certainly has enabled us to do that, and to have a much stronger say.

We were quite pleased with one of the tests of that process, with Little Cypress Reservoir, wherein we were granted 12,000 acres of mitigation land, 10,000 of which were bottomland hardwoods, and that was unprecedented. I do not think that has ever occurred, and so that was very encouraging.

We have also taken full advantage of the procedure, and have taken the Water Commission to court on another reservoir, Paluxey Reservoir, which presented an interesting case for our Attorneys General to sue themselves. But nonetheless, there is a process in place, and what I am concerned about, obviously, and this is that that process be able to work, and with all due respect to Congress, that it is not limited unnecessarily.

Mr. STUDDS. We will not ask you to speculate on how much respect is due. General Morris.

General MORRIS. Sir, I have of course one thought, philosophical perhaps, but when Congress passes a law it is in the public interest. That is the only basis for the laws that I can think of. And I think the Executive Branch has to execute those laws with the same philosophy. And if, in the process of executing the laws, any agency gets off the track serving the public interest, they should be put back in place and made to do it right.

Mr. STUDDS. The problem of course comes when rational people of good will disagree as to wherein lies the public interest.

General MORRIS. Well, in that case, then, rational people of good will should go the extra mile and find out, not stop short, which is what happened here.

Mr. STUDDS. Mr. Spear, do you want to comment on this?

Mr. SPEAR. Yes. I think I must, Mr. Chairman. We are talking about the broader issue, but we—all of us, including myself—keep coming back to the specific issue, as to whether or not there is something wrong with the way decisions are made.

I will go back to the Little Sandy case, and suggest that the decision process works. As I described earlier—and you have now heard further discussion—we made the decision to move forward the way we did not because we were an advocacy agency but because we had to go through a NEPA process. The NEPA process makes us look at the issues—is there a dire water need, et cetera—and, frankly, Mr. Chairman, I made a decision to make the recommendation to accept an easement because it was an "easy call." I did not make the decision because the process was flawed, or because I was an advocate. It was an "easy call" in terms of the water demand, the water supply, the overall situation, and the high value of those bottomland hardwoods. The comparison was between the declining waterfowl populations and the losses of wetlands, versus the information indicating at the time no 50-year demand for water. The decision was made using the existing procedures.

Mr. STUDDS. You can all relax for another day. That means the House has adjourned.

Mr. Spear, H.R. 187 would prevent the Service from acquiring water resource lands in the absence of approval from the legislature of the affected State, and this gets at something which Mr. Wynne said a few moments ago.

Would you tell us, first, what steps the Service now takes, either voluntarily, or by law, to consider the views of State Governments in deciding whether or not to acquire land.

Mr. SPEAR. The steps vary somewhat depending on the nature of the acquisition. The subject case is a donation, but the majority of cases are purchases. We have numerous authorities.

Working with our legal people this morning, we counted six different authorities for the Fish and Wildlife Service, four of which provide for donations.

All of these authorities require the approval of Congress, except for donations and some broader categories of funding like the Emergency Wetland Resources Act where a limited amount of funds may be provided to high-priority areas.

In all cases, we must coordinate through the NEPA process, which means having draft documents, final documents, and public

comment, depending on the nature of the situation. In all cases a letter to the Governor, usually to the Governor's clearinghouse, requests the views of the various State agencies.

And then, as in this case, the State assembles them and sends them to us. Sometimes there is a decision by a Governor as to the view of the State. None of these actions can proceed without State knowledge and comment.

In our wetland easement programs of the "pothole country," the Dakotas—which are not under my responsibility—the Governor has provided some general consent to acquire wetlands within certain limitations. Within that consent level—so they do not have to go back on every little piece—the Fish and Wildlife Service may act to acquire easements.

In those cases, we are operating under the broad consent language, for acquisitions that come under the Migratory Bird Treaty Act.

So, as I said, there are many authorities. In all cases, the standard requirement is the use of NEPA to consult with the State.

Mr. STUDDS. Is it unusual that you would have a variety of State voices speaking, as we do in this particular case in Texas, as opposed to a single voice from the Governor, or one person speaking for the State?

Mr. SPEAR. It is more normal to have one clear position from the State.

Mr. STUDDS. Well, it is not fair, I guess, to ask you hypothetically. Tell me if it is not fair. In this particular case, had the Governor of the State unequivocally taken a position, would that have been given considerable weight by you in your——

Mr. SPEAR. It would have been given considerable weight by me, and I assure you probably even more weight by the policy-level officials in the Department. There is no doubt that that would have been a significant action.

Mr. STUDDS. One more question for you, if I may. If 187 were enacted, what would its impact be on the ability of the Service to acquire and maintain property for conservation and wildlife protection purposes, in the real world?

Mr. SPEAR. In the real world, particularly as it relates to the donations, I think it would just about stop them because of the public access requirements alone. A lot has been made here of the fact that we do not allow public access, and I think too little has been made of that fact that this is a gift. They gave us only certain rights; that is, they gave away the right to develop this property, to log the timber, et cetera. In other words, they gave away the right to destroy the character that we wanted in the refuge system. If you go to a donor and say, "if you are going to give us something, we are going to open it wide open to the public," then they will simply say, "well, I will not give it"; and we will not get many donations.

This is at a time, under the North American Waterfowl Management Plan, when there is great encouragement for private/public sector cooperation to protect wetlands for the benefit of the waterfowl resource which is diminishing.

So, in the terms of acquisition, as I say, we must coordinate with the State. If you required specific legislative approval of every ac-

quisition, some would be protracted at great length. When you are dealing with an option from a landowner, then you have to live with the terms of the options which usually include some strict time limitations.

It would be a great complication to have the State legislature have to give specific approval on every action.

Mr. STUDDS. Incidentally, has the Texas legislature been heard from on this subject, to anyone's knowledge?

Ms. BEZANSON. No, sir.

Mr. STUDDS. Has the Texas legislature——

Mr. SPEAR. Yes. At the public hearing, several of the legislators spoke.

Mr. STUDDS. Individually, I assume; not for the legislature itself.

Mr. SPEAR. Yes, individually.

Mr. STUDDS. The gentleman from Virginia.

Mr. BATEMAN. Thank you, Mr. Chairman.

I am somewhat unclear as to how the decisionmaking process might have been changed or different—not in terms of the merits of the decision which I am certainly not in a position to judge—but the decisionmaking process itself. Would it have changed had there not been a determination of "no significant impact" as opposed to a finding that there was a significant impact?

Mr. SPEAR. If we had had a finding of significant impact, the process would have had to take another step, and that is the writing of an Environmental Impact Statement. We would then have additional public hearings and make a decision later on down the road. It would have added an extra step.

Mr. BATEMAN. So there would have been some assurance of further input from both private as well as public concerns, had the determination been made that there was a significant impact?

Mr. SPEAR. That is correct.

Mr. BATEMAN. And in the course of such hearings and discussions as did take place, at least two or more State agencies, State legislators, citizens groups, did indicate a concern about a negative impact upon a potential source of water supply that they looked upon as being important for the future. Am I correct that——

Mr. SPEAR. That is correct. That concern was expressed under the existing arrangement.

Mr. BATEMAN. And so, that having been expressed, it does seem passing strange, at least to me, that this was a matter that was regarded as not having a significant impact.

You know, again, I cannot prejudge whether the ultimate decision should have been made the way the decision has been made to this point. But it does seem awfully strange to me, that it would be made in a context of a finding that that decision, and whether to do it or not to do it had no significant impact. It boggles my mind, how you can say "no significant impact" in this context, even with agencies of the Government of Texas in some degree of disarray among themselves.

Even the fact that they are in disarray seems to me to suggest it ain't a matte without some significant impact, and I guess that is where I am bothered by the way this process has worked in this instance.

That is all I have, Mr. Chairman.

Mr. STUDDS. Mr. Hall.

Mr. HALL. Thank you, Mr. Chairman.

If I might, Mr. Spear, I just want to clear up one thing and I will be brief with you. You have called this a donation? The land?

Mr. SPEAR. Yes. We did.

Mr. HALL. You have also called it a gift. Really and truly, it is neither, is it? This was a trade, wasn't it? Wasn't this an agreement with Little Sandy, that you all would not even go in without their permission.

You had a lot of parameters that you had to go into with this club before they would enter into and execute this easement. It was a trade with your organization and with Little Sandy, was it not?

It was not just a pure out and out gift. They extracted something from you for it, didn't they?

Mr. SPEAR. Well, I guess we are talking the difference between how the negotiation went, but, by definition, it is a donation.

Mr. HALL. What did they get out of it? What did Little Sandy get out of it?

Mr. SPEAR. What they got out of it?

Mr. HALL. Yes, sir.

Mr. SPEAR. It is my understanding, at the time, that there was some concern of some members of the club about the long-term viability of the club. In essence, they wanted to preclude future members from logging, or development, or sale. They basically said we, at this time are going to protect this club, in perpetuity, to the best of our ability.

Mr. HALL. Now you have hit it. Protection. That is what they got, wasn't it?

Mr. SPEAR. That is correct.

Mr. HALL. So it was not just a pure gift?

Mr. SPEAR. Well, there was a value of the rights that we gained from them, of about $750,000.

Mr. HALL. Ms. Bezanson, tell me what your organization is? Is it the Texas Committee on Natural Resources? Are you all an elected group, or appointed by the Governor?

Ms. BEZANSON. No. We are a private, a nonprofit conservation organization, a membership organization.

Mr. HALL. Well, you were selected, then. You were not elected to anything, were you?

Ms. BEZANSON. Well, the members of my organization selected——

Mr. HALL. You were employed?

Ms. BEZANSON. Well, actually, I have been Chairman of the board of trustees of this organization for two and a half years, and was a full-time volunteer.

As recently as a month and a half ago, I did begin receiving a part-time salary, so I had to resign as Chairman, but when I was working——

Mr. HALL. But you are not a Government entity of any type?

Mr. HALL. No, we are not a——

Ms. BEZANSON. You do not make any decisions for taxpayers, or anything like that, do you?

Ms. BEZANSON. No.

Mr. HALL. You suggest that the decisions by the Water Board and by the Water Commission are fraught with error.

Where do you get your data? Would you mind supplying us the background of the data that you have relied on to give your testimony here today.

Ms. BEZANSON. Our figures are all from the Texas Water Development Board. We hired engineering witnesses for the Little Cypress hearing, who did an analysis of the water issues in this area, that used Texas Water Development Board data. We did not create our own data.

Mr. HALL. When you say that this Sabine River Authority, the project that they seek is an unneeded, uneconomical, unuseful reservoir at huge taxpayer expense, that is just your opinion based on your own figures, isn't it?

Ms. BEZANSON. No. That is my opinion based on the Texas Water Development Board's figures.

Mr. HALL. Well, we have people here who were highly selected at the Government level, at the highest levels, appointed by the Governor and elected by the people, confirmed by the Senate, who find a need for water in the future.

Ms. BEZANSON. Who was that?

Mr. HALL. Do you disagree with that, or disagree with their findings?

Ms. BEZANSON. I do not believe that is how the Sabine River Authority executive director is selected.

Mr. HALL. I beg your pardon?

Ms. BEZANSON. I disagree with the Sabine River Authority's findings, but they are not appointed by the Governor.

Mr. HALL. No. I am talking about the folks that make the decisions for the State of Texas here, who are appointed, and either elected by a group of people or at least confirmed by the Senate.

Ms. BEZANSON. There has been no decision made by the State of Texas on Waters Bluff.

Mr. HALL. Well, who is the head of your organization? Is it Ned Fritz?

Ms. BEZANSON. No.

Mr. HALL. Was it?

Ms. BEZANSON. He, at one time, was Chairman. Then I was Chairman. The current Chairman is Everett Harding of Aledo, Texas.

Mr. HALL. Wasn't it your organization that insisted on a full environmental study before Cooper Reservoir could be built?

Ms. BEZANSON. Yes. We were.

Mr. HALL. Well, now, do you see any reason why Sabine River Authority should not request a full environmental study before a Federal entity, Mr. Spear and his group here, would make a move like they made?

Ms. BEZANSON. If having this easement in place, in any way changed the character of the environment, which is the purpose of an Environmental Impact Statement, then certainly we would have requested it ourselves. In the case of this, it makes no changes whatsoever in how the environment is used.

Mr. HALL. Isn't it also your group that is holding up the building of an entity out in West Texas because it might endanger the concho snake?

Ms. BEZANSON. No. We had nothing to do with that.

Mr. HALL. Do you disagree with them on that?

Ms. BEZANSON. I have no opinion on that. We do not know enough about it to have an opinion.

Mr. HALL. And how about the Cooper Reservoir. Your group did hold that up by filing an injunction for about 15 years, didn't you?

Ms. BEZANSON. We filed an injunction because the Army Corps of Engineers was not meeting the mitigation requirements. Once they were met, then progress began on the reservoir. It is currently being built.

Mr. HALL. I have one more question for the General. General, in your many years of experience in the field of water resource development as well as in the area of Federal agency decisionmaking, have you ever known of a Federal agency to use a conservation easement to prevent a water supply project before, up to this time?

General MORRIS. I do not recall any at this time. I am not aware of any.

Mr. HALL. Well, how does the Fish and Wildlife Service consultation effort with the local, State and Federal agencies compare with your experience in that area?

General MORRIS. Well, to be frank about it, it seems to me that the exposure and the debate over the activities of the Fish and Wildlife Service is not as intense, or as public as other agencies, and one of the reasons is as just indicated.

Frequently, their actions are interpreted to have no impact on the environment. That is a subject, though, that requires close scrutiny since a "no impact" statement means more than just status quo. In fact it means more than damaging the environment. There are court cases which injunct progress on a project because it had a favorable environmental impact and failed to prepare an EIS. So it is not a question of good or bad. It is a question of whether the impact is there at all.

And to keep it in its present state, in itself, could be an impact in light of alternates. So because of the nature of the business the Fish and Wildlife Service are frequently capable of proceeding in certain directions with less public involvement than other agencies. I do not mean that critically so much as I just think it is the nature of their business.

Mr. HALL. Mr. Chairman, I would like to, in the interest of time, have permission to submit questions for the record.

Mr. STUDDS. Sure.

Mr. HALL. And to ask permission to make a part of the record statements from some parties who could not appear here, if I might.

Mr. STUDDS. Are there other components of the State of Texas that would have appeared had they——

Mr. HALL. Yes, sir, and they would have been some help to me because I have only understood about half of what the Chairman said today.

Mr. STUDDS. Fair enough.

Mr. HALL. Thank you, sir.

Mr. STUDDS. Well, interpreter services I assume would go in both directions.

I thank the gentleman, and I thank the members of the panel, particularly Mr. Spear who was subjected to both panels, that is very brave of you, without any Environmental Impact Statement on you, we apologize for, and for all of you, especially those of you from Texas who traveled a very long way. Maybe that is not for you a very long way, but it impresses the rest of us. We appreciate it.

The Subcommittee stands adjourned.

[Whereupon, at 4:38 p.m., the Subcommittee was adjourned, subject to the call of the Chair.]

[The following was submitted for the record.]

I

101ST CONGRESS
1ST SESSION

H. R. 187

Relating to conveyance of certain interests in land for use by the United States Fish and Wildlife Service.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1989

Mr. HALL of Texas introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

---

A BILL

Relating to conveyance of certain interests in land for use by the United States Fish and Wildlife Service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, the Secretary of the Interior may not, after the date of the enactment of this Act, acquire any water resource land in fee, or accept any conservation easement affecting water resource land, for use by the United States Fish and Wildlife Service unless—

(1) the acquisition or granting of the easement is specifically approved by the legislature of the affected State; and

(2) the acquisition or easement is subject to express written guarantees of access by members of the general public to the land concerned at all times.

For purposes of this Act, "water resource land" is land with respect to which at least feasibility studies have been prepared by, or at the request of, an appropriate Federal, State, or local public water authority or agency regarding the use of such land in connection with a proposed project for water storage, hydroelectric power production, stream flow regulation, or other water development projects.

I

101ST CONGRESS
1ST SESSION

H. R. 188

Relating to the rights and interest of the United States of America under a conservation easement affecting certain land in Wood County, Texas.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1989

Mr. HALL of Texas introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

---

A BILL

Relating to the rights and interest of the United States of America under a conservation easement affecting certain land in Wood County, Texas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other provision of law, on whichever of the following dates first occurs, the United States of America relinquishes all rights and interest it may have under the conservation easement affecting 3,802 acres of land, more or less, in Wood County, Texas, that was conveyed to the United States Fish and Wildlife Service by the Little Sandy Hunting and Fishing Club (a nonprofit corpora-

tion of the State of Texas) and accepted by the Service on December 18, 1986:

(1) The date of which an application is made to the Texas Water Commission for the development of the Waters Bluff Dam and Reservoir Project or any other water resource project that will impact upon the land covered by the easement.

(2) January 1, 2000.

SEC. 2. The Secretary of the Interior shall take such action as may be necessary to carry out this Act.

STATEMENT OF MICHAEL J. SPEAR, REGIONAL DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT, HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES, CONCERNING H.R. 187 AND H.R. 188

July 11, 1989

Mr. Chairman, I am Michael J. Spear, Regional Director for the Southwestern Region of the United States Fish and Wildlife Service. I appreciate the opportunity to testify on H.R. 187 and H.R. 188, which relate to acceptance by the Service of conservation easements donated by the Little Sandy Hunting and Fishing Club in the State of Texas.

The Service first became aware of the Little Sandy Hunting and Fishing Club in 1983 when the Middle Sabine River bottom, where the Club is located, was identified as one of the highest quality bottomland hardwoods forest sites in the State. The Service published a Texas Bottomland Hardwoods Concept Plan in May 1985. In this Plan, the Middle Sabine River bottom was identified as one of fourteen priority-one areas in the State.

The Club contacted the Service in August 1985 concerning the possibility of donating an easement. In July 1986 the Draft Environmental Assessment (EA) on the proposed Little Sandy Easement was published. On September 30, 1986, the Sabine River Authority (SRA) and Texas Water Development Board met with the Service to request a public meeting and extension of the comment period, and to present the Service with a copy of the Feasibility Study for Waters Bluff Reservoir. A public comment session was held on October 27, 1986, at the request of SRA. The Final EA with a Finding of No Significant Impact (FONSI) was signed on December 12, 1986, and distributed to the public. The easement was subsequently accepted by the Service on December 18, 1986.

The SRA sued the Service in federal District Court in Texas, challenging the final EA and the decision to accept the easement. That litigation is pending.

The Club easement protects over 3,800 acres of unique, old-growth bottomland hardwood forest and open water habitat. The area has been rated as one of the most important waterfowl habitats for mallards and wood ducks in the Central Flyway. The site is of value to a number of animal species of special concern, including the wood stork and osprey, and supports a colonial waterbird colony of over 10,000 birds.

Under the National Wildlife Refuge System Administration Act, the donated interest in the land became part of the National Wildlife Refuge System. Thus, use of the land for any water development, including the proposed Waters Bluff project, is prevented without either a determination of refuge compatibility by the Service or an Act of Congress removing the area from the System.

Because of the potential conflict with water development, the Service considered the matter carefully before accepting the donation. Protection of the rapidly disappearing bottomland hardwood habitat is our highest priority for land acquisition in the Texas-Oklahoma region. However, we do not intend needlessly to frustrate the water development objectives of Texas or any other State.

In this particular case, our Environmental Assessment determined that many alternatives to the Waters Bluff reservoir are available, and that the project had not been approved by the State. Because the donation maintains the status quo in terms of ecological value of the land, and water development is neither needed during the planning horizon nor precluded forever, I recommended that we accept the donation.

There is concern by some that our bottomland hardwood protection efforts may threaten other proposed reservoirs in eastern Texas. I believe these concerns are unfounded. We have surveyed the entire region for bottomland hardwood areas. The fourteen best areas in Texas contain over 460,000 acres. The Service's goal -- a joint project with the Texas Parks and Wildlife Department, the Oklahoma Department of Wildlife Conservation, and many other entities -- is to protect 250,000 acres in both States. We therefore have considerable flexibility to meet our goal with a minimum impact on potential water development projects.

H.R. 187 would require the concurrence of the appropriate state legislature before any "water resource land" could be acquired by the Service. This bill would also require that the general public be guaranteed access "at all times." Approval of the affected state legislature would be required for any acquisition of lands for which even feasibility studies have been prepared by a "local public water authority."

Conservation easements, either purchased or donated, have been employed successfully since 1958 to protect critically needed waterfowl habitat. Several hundred units covering nearly three million acres of wetland habitat nationwide have been protected by this means.

In the central valley of California, for example, an effort was initiated in 1979 to protect 100,000 acres of waterfowl habitat. To date, the Fish and Wildlife Service has acquired an interest in 150 tracts totalling 35,000 acres of wetlands at a cost of $17 million. All but one of these 150 tracts were protected by the use of conservation easements where the owners, which were hunting clubs, retained the hunting rights. Had the Service not pressed forward with acquiring these easement interests, this valuable waterfowl habitat would have probably been lost to various types of development.

H.R. 187 would apply to a significant percentage of the wetlands of the United States. With many state legislatures meeting biennually, this bill could drastically prolong pertinent Service

protection projects and, potentially, defeat projects with even minor conflicts. Any type of water development project, regardless of purpose, would trigger the provisions of the bill.

The portion of the bill requiring that public access be guaranteed at all times would cause the Service many problems. This provision would prohibit closure, on even a temporary basis, of a portion of any refuge subject to the bill. Portions of nearly all refuges are routinely closed to the public during parts of the year, or permanently, to protect wildlife resources. Requiring public access at all times to these areas would seriously threaten their value for wildlife management and could severely compromise the purposes for which the interests were acquired.

In addition, easements with the right of public access are almost never available. Landowners who continue to own property covered by conservation easements are usually reluctant to convey the right of public access, since these owners often continue to occupy the land. Requiring public access for sites protected by conservation easements held by the Service and subject to this bill would effectively prohibit easements in these cases.

Finally, enactment of H.R. 187 would create a dangerous precedent. Passage could encourage the introduction of similar bills requiring approval of the State legislature where potential refuges conflicted with other land uses. It might also result in legislation promoting other means of weakening or defeating refuge proposals. We believe that the discussion of water allocation and states rights is of such importance that it should be addressed in a much broader context and not singly as with regard to the refuge system.

H.R. 188 would remove the Little Sandy Hunt Club easement land from the National Wildlife Refuge system. As I stated previously, litigation is pending on this issue. Therefore, I will not comment on H.R. 188 in detail at this time. Congress has provided legislative authority for the Department of bring land into the Refuge System in accordance with the process set forth in the National Environmental Policy Act. This process now maximizes public involvement. We recommend that any Congressional corrective action be within the context of the existing legislative framework.

The Service is seeking to fulfill its obligations to implement the Migratory Bird Conservation Act of 1929 and the Migratory Bird Hunting Stamp Act of 1934, under which conservation easements are accepted. These easements help to achieve the goals of the North American Waterfowl Management Plan, a joint effort of the Canadian Wildlife Service and the U.S. Fish and Wildlife Service, which was initiated in May 1986. The plan calls for the protection of migratory bird habitat in key habitat areas throughout the country, including the bottomland hardwoods area of east Texas.

In addition, the Emergency Wetlands Resources Act of 1986, which was drafted in this Committee and passed by Congress on October 3, 1986, reaffirms the commitment of the United States to protect important migratory and wintering waterfowl habitat in the lower Mississippi-Gulf Coast region. The Act also stresses the need to protect threatened wetland systems. Based on an analysis of wetland trends from the mid 1950's to the mid 1970's, palustrine forests (i.e. bottomland hardwoods) had the greatest rate of loss of any wetland type in the United States, with nearly 6 million acres of these forests being converted to other uses.

Thank you for the opportunity to present the Administration's views on these two bills. This concludes my prepared statement, and I would be pleased to respond to any questions you may have.

STATEMENT

OF

THE

SABINE RIVER AUTHORITY OF TEXAS

BY

SAM F. COLLINS
EXECUTIVE VICE PRESIDENT AND GENERAL MANAGER

IN SUPPORT OF

H.R. 187

AND

H.R. 188

TO THE

SUBCOMMITTEE ON
FISHERIES AND WILDLIFE CONSERVATION
AND THE ENVIRONMENT

OF

THE COMMITTEE ON
MERCHANT MARINE AND FISHERIES

UNITED STATES CONGRESS

JULY 11, 1989

A GOVERNMENTAL AGENCY
OF THE
State of Texas

409-746-2192
FAX # 409-746-3780

SABINE RIVER AUTHORITY
of Texas

P. O. BOX 579
ORANGE, TEXAS
77630

MEMBERS OF THE COMMITTEE:

I am Sam F. Collins, Executive Vice President and General Manager of the Sabine River Authority of Texas (SRA). I appear before you today in support of H.R.187 and H.R.188.

INTRODUCTION

The SRA, created by an act of the Legislature in 1949, was established with the responsibilities to develop, conserve and protect the water resources within the Sabine Basin of Texas which covers all or part of twenty-one counties in the State of Texas (see Attachment 1). The SRA is governed by a nine member Board of Directors who are appointed by the Governor to six year terms. Each Director must reside within a county of the Sabine Basin. The Authority, as an agency of the State, receives no appropriations and is not empowered to levy or collect any kind of taxes. Operating funds are primarily derived from the sale of raw and treated water, hydro-electric power, water quality services, and recreational and land use permit fees.

With the creation of the SRA in 1949, and with the jurisdictional midstream boundary, any development along the Stateline Reach of the River had to be undertaken jointly with the State of Louisiana. In this regard, the Sabine River Authority, State of Louisiana, was created by statute in 1950 and given jurisdiction over the area of the Basin within Louisiana. A year later representatives of the two states began negotiations that ultimately led to a Sabine River Compact, approved by their legislatures and by Congress.

The initial SRA operational activities began in 1954 with the purchase of the privately owned Orange Canal System. This purchase was financed by the sale of revenue bonds. A master development plan for the Basin was produced in 1955. In 1956, the SRA began its first major development in the Basin by entering into contract with the City of Dallas for the SRA to build, own, and operate the Iron Bridge Dam and Reservoir (Lake Tawakoni) Project. This project was completed in 1960.

The bi-state Toledo Bend Dam and Reservoir Project was initiated in 1955 by an agreement between the SRA and the Sabine River Authority, State of Louisiana. Under this agreement, feasibility studies were initiated and further arrangments were made for financing and construction of the project. Land acquisition was initiated in 1963, and construction began in 1964. Impoundment of waters in Toledo Bend Reservoir began in 1966, the top of power pool level was reached in 1968, and power generation began in 1969.

The Lake Fork Dam and Reservoir Project is the most recent water supply project completed by the SRA. A feasibility study for a dam and reservoir project on the Lake Fork Creek tributary of the Sabine River was authorized in 1972. After completion of this study in 1973, the SRA completed financing arrangements and began construction on the project in 1975 with conservation pool level reached on the completed project in 1985.

The SRA has taken an active role in water quality matters since its initial operational activities began in 1954, and over the years has expanded to meet increasing needs throughout the Sabine River Basin. This commitment to water quality protection has evolved into the establishment of the present Environmental Services Division whose duties and responsibilities include involvement in a full range of water quality and pollution control activities.

As a revenue based agency, the SRA's projects and activities are based on demonstrated needs since customers actually fund the cost of such services. At the present time, all of the water supply projects in the Sabine Basin have been completed without federal funds.

NEED FOR ADDITIONAL WATER

The SRA has been aware of the need for additional water supplies in the upper Sabine Basin (area upstream from Toledo Bend Reservoir) since shortly after the initiation of construction of the Lake Fork Reservoir Project in 1975. The entire yield of Lake Tawakoni had previously been committed and almost the entire yield of Lake Fork was committed at that time. By 1980, the SRA was receiving requests for additional water supplies which could not be fulfilled through any existing water resource project within the upper Basin area.

In 1981, the SRA began an effort to determine the alternatives for meeting water supply needs through a coordinated program involving numerous cities and industries in the upper Basin area. This effort led to the formation of a Steering Committee composed of twelve cities

and four industries which guided the completion of the "Upper Sabine Water Supply Study" in May 1983. One alternative considered, the upstream transportation via pipeline of water from Toledo Bend Reservoir was addressed in several different studies including the Bureau of Reclamation (BR) study of Big Sandy Reservoir and, in each case, was found to be not feasible in terms of project costs and long term commitment of energy resources. As a matter of fact, the Fish and Wildlife Service (FWS) presently supports the transportation of a major portion of the SRA yield of Toledo Bend Reservoir from the lower Sabine River near Orange to the Houston area (see Attachment 2). The SRA has been actively pursuing the transfer of water from Toledo Bend through the lower Basin to the Houston area (this concept was addressed in the 1984 Texas Water Plan). The SRA has an existing agreement with the San Jacinto River Authority for such a transfer for up to 600 million gallons per day. In addition to the FWS support, this concept has been endorsed by the Texas Parks and Wildlife Department, the Houston Sierra Club, the Houston Audubon Society, the Outdoor Nature Club, the Houston Sportsman's Club, the Big Thicket Conservation Association, and the League of Women Voters of Houston (see Attachments 3 and 4).

During this same period of time, efforts were underway to revise the Texas Water Plan which was completed in November 1984. Also, in December of 1983, the SRA's Board of Directors authorized the initiation of a study for the Update of the Master Plan. This plan, which was completed in March of 1985, indicates a current and growing need for additional surface water development in the upper Basin area. Basin planning reports prior to the 1985 Update propose reservoirs for future development in this area, including the Carl L. Estes Reservoir (Mineola), located on the main stem of the Sabine River, and the Big Sandy Reservoir on Big Sandy Creek. The subsequent discovery of lignite coal deposits in the Carl L. Estes Reservoir site prevents development of this project at any time in the foreseeable future (this project is currently scheduled by the Corps of Engineers for deauthorization - see Attachment 5) and the Big Sandy Reservoir, with a projected yield of about 50,000 acre-feet/year, is not large enough by itself to serve the long-term needs of this area. These facts led the Authority to search for an additional reservoir site on the main stem of the Sabine River capable of serving the long-term needs of the area.

An examination of a river mileage report of the Corps of Engineers indicated a potential new dam site located on the Sabine River upstream from the City of Gladewater and near the Smith-Gregg County Line (see Attachment 6). A review of prior studies showed this to be a site that had not been previously studied, and that there had not been

any information developed on a potential dam site at this location. Further examination of this site showed the reservoir area to be outside the known recoverable lignite deposits. As a result, the Waters Bluff Dam and Reservoir project was included in the 1985 Update of the Master Plan as the only totally new project. This Master Plan concluded that the construction of Waters Bluff and Big Sandy Reservoirs was necessary in order to provide the additional water supply needs in the upper Sabine Basin through the year 2030.

It should be noted that the FWS was fully aware of the SRA's studies concerning the Waters Bluff Project through coordination activities related to the BR's Big Sandy Study (see Attachments 7 and 8). However, FWS never mentioned to the SRA or any other agencies responsible for water supply any plans concerning acceptance of a conservation easement on the Little Sandy Hunting and Fishing Club property located within the Waters Bluff Reservoir Site (see Attachment 9). The SRA first became aware of the proposed easement (see Attachment 10) upon receipt on September 10, 1986, of the FWS's "Draft Environmental Assessment and Decision Document, Proposed Land Protection, Little Sandy Hunting and Fishing Club Easement."

Through the SRA's insistence the FWS did hold a public meeting concerning the Draft EA on October 27, 1986 (see Attachment 11, pages 5-6). Significant public controversy was expressed at the meeting and other than FWS, the TPWD was the only public entity supporting the easement acquisition. All other entities, including the Corps of Engineers (see Attachment 12) and the Bureau of Reclamation (see Attachment 13) as well as local elected officials, expressed opposition to the easement. The unilateral acceptance of the easement by FWS represents a precedent-setting action in that this is the first time such an easement has been accepted in a public purpose reservoir site.

The "Waters Bluff Dam and Reservoir Preliminary Feasibility Study" completed in March 1986, determined that Waters Bluff was a feasible project and would be capable of providing sufficient surface water supplies to meet the needs in the upper Basin. This study also recommended the consideration of a possible first-stage development named the "Belzora Landing Dam and Reservoir" as a means of providing the short-term needs of the upper Basin area.

The proposed Waters Bluff Reservoir was not included in the 1984 Texas Water Plan because it had not been identified as a potential site prior to 1984. The Texas Water Plan is a flexible guide for the development of water resources in the State. Local entities often have more up-to-date planning documents since the Texas Water Plan is updated only on the average of every seven and one-half

years. State law does not require potential reservoirs to be included in the Texas Water Plan in order for them to be granted a State permit (see Attachment 14). The absence of Waters Bluff Reservoir from the Texas Water Plan then does not preclude its development. However, it is anticipated that the Waters Bluff Reservoir will be included in the next revision of the Plan.

The "Feasibility Report on the Belzora Landing Dam and Reservoir" completed in May 1988, found that this first-stage project could serve the short-term water needs of the upper Basin while at the same time allowing postponement of part of the construction and relocation costs involved with the larger Waters Bluff Project. The Belzora Landing Dam would be a smaller structure located about 14 miles upstream of the Waters Bluff site, and would be built to the same water supply pool level as the Waters Bluff Project (303.0 feet msl). Please see Attachment 15 for an outline concerning the current status of alternative water supply sources considered for Waters Bluff Reservoir.

In 1985, the estimated population of the upper Sabine Basin was 340,238 while the estimated total population of the 15 counties wholly or partially in the upper Sabine Basin was 857,877. By 2030, the population of the upper Sabine Basin is projected to be 645,058 and the 15-county region to be 2,023,257. Municipal water needs based on this population information and other water needs which were determined for manufacturing, steam electric, irrigation, mining, and livestock to the year 2030 were developed in the "Upper Sabine Basin Regional Water Supply Plan" completed in May 1988. This study shows that 208,962 acre-feet/ year (186,550,000 gallons/day) of additional surface water supplies will need to be developed to meet the year 2030 requirements within the upper Sabine River Basin.

In view of the critical need for additional water supplies, the SRA has initiated water conservation measures which include public education programs, metering requirements for all water supply customers, contract specifications requiring compliance with water conservation rules of the Texas Water Commission (TWC), and implementation of the State's only inverted rate structure for the purchase of wholesale raw water supplies. Additional measures undertaken to make more effective use of existing supplies include the study of systems operation and the joint use of Lake Tawakoni and Lake Fork Reservoirs for which permit amendments were issued by the TWC in November 1986.

-6-

OTHER CONSIDERATIONS

We believe that mitigation requirements for the Waters Bluff Reservoir would be an appropriate alternative to the Club easement acquisition. Construction of Waters Bluff Reservoir would inundate only a limited area of the main-stem of the Sabine River. The predominant amount of bottomland habitat between Lake Tawakoni and Toledo Bend headwaters (a distance of some 250 river miles) would remain unaffected by reservoir development, and we believe that an acceptable compromise could have been achieved which would recognize the goals of the FWS and the SRA if FWS would have been willing to seriously discuss the issues. Unfortunately, this was not the course of action chosen by FWS. The hardwood bottomland habitat upstream of the Waters Bluff Project would be an excellent site for providing a wildlife management area. Portions of this area have already been determined by the FWS to be habitat of high value (see Attachment 8).

We believe an unbiased scientific study of this entire area of the Sabine River would reveal large areas of bottomland hardwood outside the Waters Bluff Reservoir site which would be excellent sites for bottomland hardwood preservation. We feel without question that Waters Bluff Reservoir could be constructed along with the preservation of an excellent hardwood bottomland habitat upstream of the project, through the existing Section 404 permit process, thereby providing for needed water supplies and at the same time establishing a public wildlife management area for future generations.

The SRA has a history of cooperative efforts concerning wildlife and fisheries management. A waterfowl breeding and wintering habitat management area on Toledo Bend Reservoir was initiated through a 1973 cooperative agreement between SRA and the TPWD (see Attachment 16). This cooperative program has proven very successful and beneficial for waterfowl as well as other native game and non-game species. Related to fisheries management, SRA and TPWD began the most intensive fishery management program ever applied to a new reservoir in Texas in 1976. This innovative preimpoundment program got the lake off to a good start and has presently resulted in the Lake Fork Reservoir holding 22 of the 50 bass records in the state (see Attachment 17).

The management efforts discussed above were achieved even in view of the lack of an acceptable FWS methodology for determining the expected gains and losses of fish and wildlife habitats attributed to water resources development. The FWS had for many years relied on user-day analyses for ecological evaluations, and it was not until April of 1982 that an alternative existed when the FWS completed a report on the Habitat Evaluation Procedures (HEP) as a demonstration study on Big Sandy Reservoir (one of five such test studies in the United States).

WATERS BLUFF LAWSUIT

After FWS accepted the easement on December 18, 1986, and due to the urgency of this matter, the SRA filed a lawsuit in Federal Court on March 19, 1987, against the United States Department of the Interior, the FWS and the Club in order to challenge the acquisition of the easement. However, these problems transcend the case related to the proposed Waters Bluff Reservoir and are really of National significance (see Corps letters included as Attachment 12). We have included a list of entities and organizations who agreed to intervene on behalf of the SRA in its Waters Bluff lawsuit (see Attachment 18).

In accepting the easement, the FWS failed to comply with rules and regulations established under the National Environmental Policy Act (NEPA) to guide Federal agencies in taking actions which could have an effect on the quality of the human environment. The FINAL ENVIRONMENTAL ASSESSMENT (EA) is deficient in many regards. Of the greatest concern is its total failure to adequately consider the projected water needs of the State of Texas. In addition, in preparing the FINAL EA, the FWS failed to carry out their duty to coordinate with other Federal agencies, specifically the Bureau and the Corps. Instead, the FWS's primary objective appears to have been the completion of the easement agreement in the most expeditious manner possible. Also, the FWS has failed to comply with agency regulations regarding the management of property considered part of the National Wildlife Refuge System. The terms and conditions of the easement executed by the FWS fail to provide adequate opportunites for the agency's personnel to manage the property properly. Instead, the Club is given unrestrictive and exclusive use of the property and even FWS must give prior notice before entering upon the new National Wildlife Refuge.

The EA fails to consider the total impacts of the acquisition of the easement. If permitted to stand, a dangerous precedent will have been established by the actions taken by the FWS -- all for the purpose of protecting the right of a few individuals to the private and exclusive use of the land for hunting and fishing. The FWS Texas Bottomland Hardwood Preservation Program (see Attachment 19) has selected 62 bottomland hardwood areas in east Texas for preserving some 250,000 acres of bottomland hardwood habitat. Coincidentally, Waters Bluff and Big Sandy Reservoir Sites, along with three other reservoir sites within the upper Sabine Basin which have additional development problems such as lignite, are in areas listed by the FWS as being within the bottomland hardwood

preservation areas. Such a trend has national implications, for if the mere donation and acceptance of private land to the federal government for alleged environmental reasons will effectively preclude the development of needed water supply projects located in Texas and in other parts of the United States, the State of Texas and the entire country will be affected. In Texas alone, it is anticipated that approximately seventy-five percent of the State's future water supply sources may be affected (see Attachment 20).

Although the FWS disputed the precedent-setting nature of the easement acquisition in the Environmental Assessment, they have since conceded that this is the first acquisition to foreclose a planned and needed water supply project. In reference to the 250,000 acres identified for protection in eastern Texas, the FWS has also acquired approximately 5,000 acres of bottomland hardwoods in southeastern Oklahoma in addition to the easement on the Little Sandy Hunting & Fishing Club. FWS is presently studying the acquisition of four other bottomland hardwood tracts of approximately 18,000 acres in eastern Texas.

The precedent-setting value of this case is clearly the reason why it is attracting the attention of national environmental organizations. Both the Sierra Club and the National Audubon Society have intervened on behalf of the government and the Club. Even though numerous local entities and state and national organizations have attempted to intervene on behalf of the SRA, the Federal District Court has allowed only one such intervenor, the Texas Water Conservation Association.

NEED FOR LEGISLATIVE CORRECTION

As has been demonstrated, the SRA currently has requests for water in the upper Sabine Basin which cannot be fulfilled as all water in that area is already committed. We have instituted water conservation measures in an attempt to make the greatest use of existing water supplies. Even with these measures, we project new water resources of at least 200,000 acre-feet/year will be needed prior to the year 2030. As has been shown, there are only two projects which can serve to meet the needs of the upper Basin area, Big Sandy and Waters Bluff Reservoirs. Of these two, only the Waters Bluff Reservoir is large enough to serve the projected water supply needs.

It is evident that the federal bureaucracy (FWS) is attempting to impose yet another federal restriction on the development of future state and local water resource projects even though no federal funds are being utilized (Note FWS letters included as Attachment 21). By imposing the requirement that Congress must authorize a project which includes National Refuge System lands, the FWS will

be able to hold the state and local agencies hostage and make all kinds of demands before they would approve of the needed legislation. Therefore, it is imperative that H.R.188 become law so that the citizens of the upper Sabine Basin can adequately supply their future water needs through the construction of Waters Bluff Reservoir. Also, H.R.187 is vitally needed because what is at issue in this legislation is a precedent which the FWS and national environmental groups will use throughout the United States to halt future water development projects for years to come if they prevail. If it is determined that water project development may be halted by the donation of conservation easements to the FWS without regard to the water-related needs of a community, there is no end to where this practice will be used.

The Sabine River Authority of Texas strongly urges your favorable consideration of both H.R.187 and H.R.188.

The list of attachments are located in House Annex II, Room 543, at the Subcommittee on Fisheries and Wildlife Conservation and the Environment.

TESTIMONY OF JOE H. SHARP, JR.

I am the President of the Little Sandy Hunting and Fishing Club ("Little Sandy") of Hawkins, Texas.

H.R. 188, if enacted, would force the federal government to repudiate Little Sandy's donation to the United States of a permanent conservation easement on over 3,800 acres of bottom land hardwood forest in Texas, a state presently suffering the most significant loss of forested wetlands in our Country.

Little Sandy was formed nearly 90 years ago during the administration of Theodore Roosevelt, the first president to insist upon the preservation and protection of America's environmental heritage. In this spirit, Little Sandy has managed and preserved 3,800 acres of land in Wood County, Texas, on which lies hardwood bottom lands, lakes, old growth, forests and on which rare and endangered species of plant and animal life make their home. In fact, Little Sandy has an on-site manager and staff whose job it is 365 days of the year to protect the natural integrity of this land, to control poaching and to monitor the property against the threat of fire.

Little Sandy wants only to ensure a continued and undisturbed future for these irreplaceable 3,800 acres of bottom land. To do this, the Club donated to the United States an easement that will last as long as our Country; an easement that forbids future development and requires all subsequent owners to honor its terms; an easement worth $750,000 which Little Sandy gave at no cost to the federal government, at a time when other landowners are exacting tens of millions of dollars for similar kinds of conveyances.

Most important, the 84 families who are Little Sandy have not viewed the land in economic terms or been motivated by profit considerations to exploit the land. The Club has had countless opportunities to cut the timber and drain the wetlands and on every occasion, those opportunities have been rejected. Rather, we chose to maintain this land's native beauty and share it with persons interested in preserving and protecting its uniqueness.

Scientists from surrounding universities are encouraged to visit. Biologists, botanists, ornithologists, and ichthyologists have been welcomed. Students, nature groups and all who wish to appreciate nature's splendor will find a real opportunity to view what has been described as one of the last pristine places in Texas.

It is not only Little Sandy that considers this land uniquely worthy of permanent protection. To combat the massive destruction of hardwood forests and to preserve the wintering and breeding habitat of waterfowl, the United States Fish and Wildlife Service spent millions of dollars to determine the most important bottom land areas left in this Country. The Service concluded that the acreage controlled by Little Sandy is a Priority 1 site, the highest quality site in Texas worthy of perpetual preservation. The reasons for this are simple.

Coloring the landscape are tall mature trees, many older than this Nation. The oak, black gum, sweet gum, elm, ash and other hardwood trees are among the largest in the State of Texas. In fact, some of these trees are so huge you have to identify them by looking at the foliage canopy <u>through</u> <u>binoculars</u>. These giant trees provide an abundance of food, cover and nesting areas for the native wildlife, which include deer, raccoon, beaver, bobcat, squirrel, many species of ducks, blue herons, bald eagles and even alligators! The land is also said to be home to the Bachman sparrow, which is near extinction. Thousands of birds rest here during third seasonal migrations. In addition, there are large stands of giant cane, which flourish here because Little Sandy has refused to allow grazing by livestock. Also sharing this land is a diverse and unique plant community, including rare and endangered species.

Trees bearing seeds before Columbus discovered the new world and animal life that now lives only on this land cannot be replaced, either overnight or over centuries. The trees in the bottom lands require 30-50 years to mature. Even then, they cannot stand in the place of trees that chronicled the fight for

Texas' independence, the Civil War and the Great Depression. There simply is no substitute available. Texas' children, its future generations and their guests -- whether from other states or other countries -- should have the chance to study this rare natural heritage.

The importance of saving the bottom lands is heightened by the enormous pressures of commercial real estate development. While couched in terms of water needs, this Bill is nothing more than an attempt at land development by a state river authority. Indeed, the water authority is simply a special interest group that wants to assume exclusive control of this acreage. If Little Sandy's conveyance is rejected, one more natural treasure will be stolen forever.

Apparently, the river authorities only see these bottom woods in commercial terms. They refuse to accept this land as a life source for plants and animals or as a priceless treasure. They refuse to calculate the damage and environmental deprivation their decisions compel. Instead, the river authorities eschew the considered views of the Fish and Wildlife Service to hoard and destroy nature's booty, all in the name of water supply. They would flood the entire bottom land area and drown its plant and tree population in a watery grave.

The Fish and Wildlife Service asked Little Sandy to help protect the wildlife and wetland forests of Texas, and we have voluntarily and enthusiastically done so. It would be a shame to negate our donation of a permanent conservation easement on some of the most important hardwood bottom lands in the United States, in favor of a special interest which favors bulldozing a natural laboratory unrivaled in size and genetic diversity.

These 3,800 acres are a place of tranquility and peace, the kind President Roosevelt strongly encouraged us to protect. Little Sandy has answered that call for almost 90 years. Let us continue to that tradition of preservation. We respectfully urge you to reject H.R. 188.

WATER
RESOURCES
CONGRESS
3800 N. Fairfax Drive, Suite 7
Arlington, VA 22203
703/525-4881

CHALLENGE 2000
WATER RESOURCES CONGRESS
ANNUAL MEETING
New Orleans, Louisiana, May 5-9, 1990

Testimony by LTG J. W. Morris USA (Ret.)
Chairman of the Board of Directors

Water Resources Congress

Before

Subcommittee on Fisheries, Wildlife and the Environment

U. S. House of Representatives
July 11, 1989

11 July 1989

Mr. Chairman and Members of the Committee:

I am J.W. Morris, appearing this afternoon on behalf of the Water Resources Congress. While our headquarters is nearby, our Members may be found in all sections of the United States, particularly where water is recognized as the chief ingredient for life, livelihood, and outdoor enjoyment.

The Water Resources Congress dates back to 1902, making us the oldest voice in support of wise water resource management in the Nation. We were witness to the great floods which racked the Mississippi, Missouri, Ohio and Columbia River Basins from the early days of this century up through the 1950's.

Our membership worked tirelessly to support the river basin developments of the Corps of Army Engineers, the Department of the Interior's Bureau of Reclamation and the Soil Conservation Service of the Department of Agriculture.

We have also witnessed, with the passing of the years the transition into the multiple-purpose planning approach which balance the water management for flood control, navigation, irrigation, generation of hydro-electric power, water supply, clean water, recreation and fish and wildlife conservation.

We've seen families enjoying water-based recreation alongside man-made reservoirs in areas where lakes were unheard of. In short, the public at work and at play, benefitting economically and enjoying a better quality of life thanks to prudent water management programs.

Note, I stressed public participation. These developments, be they federal, state or locally developed, are planned, built, and managed for the people - not individuals, not clubs, not for private consumption because government sponsored projects are paid for through public tax dollars.

And it is public interest that provides the backdrop for this hearing. In this instance, it is the Waters Bluff Project, which will provide water supply, hydro-electric power, streamflow regulations, recreation and fish and wildlife benefits.

The Project, located in Wood County, Texas, part of the Sabine River basin, has been proposed for construction by the Sabine River Authoriuty, a governmental agency created by the laws of the State of Texas and vested with responsibility for the waters of the rivers and streams in the watershed of the Sabine River and its tributaries.

The Waters Bluff Project, a detailed feasibility study done by the Sabine River Authority, was found to be a viable and feasible project, needed in the public interest, to meet the projected water needs in the Sabine Basin.

Suddenly, however, the proposed Waters Bluff Project on its way to construction, lost 3,802 acres of its reservoir area when the Little Sandy Hunting and Fishing Club, owners of the land, entered into negotiations with the U. S. Fish and Wildlife Service which led to granting a conservation easement of the 3,802 acres to the Federal Government. As I understand the conditions, the Club is to maintain ownership and exclusive use of the land in perpetuity.

Simply stated, when the Fish and Wildlife Service accepted the Club's donation of the easement, it seriously impeded development of the Waters Bluff Project, while at the same time preserving ownership and exclusive use of the land for Little Sandy Hunting and Fishing Club.

The Water Resource Congress is not here to advocate, or for that matter, even debate, the Waters Bluff Project. Our Agency is here, however, to express its deep concern over the most unusual and, in our view, inappropriate procedures used in this case and their potential effects nationally.

In this particular case, the coordination path between the interested agencies was abandoned and, in effect, became non-existent. On September 8, 1986, the Fish and Wildlife Service issued a public notice of a Draft Environmental Assessment covering its proposal to accept a conservation easement from the Club. The Draft EA was prepared without consultation or coordination with the Sabine River Authority or any other Federal or State Water Agencies. It contained only a cursury review of the alternatives to acceptance of the easement and failed to consider the effects of the easement on the Waters Bluff Project and the overall water needs of the State of Texas.

Comments on the Draft Environmental Assessment drew strong responses urging that the easement not be consummated because of the adverse effect it would have on the development of a much needed water resource.

The comments also challenged the Fish and Wildlife Service agreement to grant the Club exclusive use of the land after the acquisition of the easement as well as the lack of coordination with other governmental agencies. Both the Bureau of Reclamation and the Corps of Engineers opposed the easement.

The matter is now in the courts headed Sabine River Authority v. Department of the Interior.

The Water Resources Congress objects to the Fish and Wildlife Service disregard for the fundamental public interest precept which guides or should guide the decisions of all Federal Agencies. Every modern law requires the responsible Federal Agency to determine the interest of the public in its actions. For example, new Federal regulations or procedures require announcement and public review and comment before adoption.

Futhermore, the Water Resources Congess believes that the environmental assessment should be the final NEPA evaluation of a Federal action only if there are no significant impacts and the judgment of the responsible federal official making such a decision, is not challenged. The normal procedure when the Environmental Assessment decision is challenged is to prepare the Environmental Impact Statement and follow the review procedures associated therewith.

Additionally, the Water Resources Congress supports the concept that except for specifically justified situations, land under Federal management is to be made available for public use.

Finally, the Water Resources Congress objects to arrangements between private activities and a Federal Agency which bypass and foreclose on the rights and authority of the States. The position of the State Executive and State Governments have always been valued and meaningful in the actions of Federal agencies, especially within the Executive Branch.

In summary, interest of Water Resources Congress in this matter extends far beyond the actions of the Sabine River Authority, the Waters Bluff Project or even the State of Texas. at issue here is a precendent, which, if successful, will be attempted throughout the United States to serve special interests rather than the public interest in the management of the Nation's water resources.

Water Resources Congress endorses Representative Hall's proposed legislation (H.R. 187 and H.R. 188).

I thank you, Mr. Chairman, and Members of this Committee for the opportunity to appear before you today.

NWRA

PRESIDENT — Raymond R. Rummonds
VICE PRESIDENT — James W. Trull
TREASURER — Ivan W. Flint
EXECUTIVE VICE PRESIDENT — Thomas F. Donnelly

955 L'ENFANT PLAZA, S.W., SUITE 1202
WASHINGTON, D.C. 20024-2170
(202) 488-0610

BOARD OF DIRECTORS
ARIZONA
Reid Teeples
CALIFORNIA
Raymond R. Rummonds
COLORADO
John M. Sayre
HAWAII
Manabu Tagomori
IDAHO
Sheri Chapman
MONTANA
Mark Etchart
NEBRASKA
Homer Loutzenheiser
NEVADA
Lyman McConnell
NEW MEXICO
Wayne P. Cunningham
NORTH DAKOTA
Vernon Fahy
OREGON
James R. Ottoman
SOUTH DAKOTA
Jeffrey L. Nelson
TEXAS
Fred Pfeiffer
UTAH
Ivan W Flint
WASHINGTON
James W Trull
WYOMING
Meri Rissler
COMMERCIAL
Walter Linzing
FINANCIAL
Stanford G. Ladner
GROUNDWATER
Rodney DeBuhr
MUNICIPAL
Kenneth Witt

STATEMENT

of

Thomas F. Donnelly
Executive Vice President

National Water Resources Association

before the

Fisheries and Wildlife Conservation Subcommittee
Merchant Marine and Fisheries Committee
U.S. House of Representatives

on

H.R. 187 - Relating to Conveyance of Certain Interests in land for use by the United States Fish and Wildlife Service
and
H.R. 188 - Relating to the Rights and Interest of the United States of America under a Conservation Easement Affecting Certain Land in Wood County, Texas

July 11, 1989

Mr. Chairman and Members of the Committee:

I am Thomas F. Donnelly, Executive Vice President of the National Water Resources Association, I appear before this Committee today to express our serious concern over the recent actions of the U.S. Fish and Wildlife Service in obtaining a conservation easement from the Little Sandy Hunting and Fishing Club in Wood County, Texas.

The National Water Resources Association (NWRA) is a nonprofit federation of associations and individuals dedicated to the conservation, enhancement, and efficient management of our Nation's most precious natural resource, WATER. The NWRA is the oldest and most active national association concerned with water resources policy and development. Its strength is a reflection of the tremendous "grassroots" participation it has generated on virtually every national issue affecting western water conservation, management, and development.

The Board of Directors of the National Water Resources Association has unanimously voted its support for H.R. 187 and H.R. 188, and in particular, the legal principles underlying these two bills.

We firmly believe that the conservation easement in question is a brilliantly conceived scheme by a small group of wealthy Dallas businessmen to circumvent the eminent domain provisions of the laws of the State of Texas. They have brought in the federal government as an interest holder within the boundaries of a proposed state water supply project. The Federal interest essentially negates the eminent domain powers of the state and local governments. The maneuver almost defies a legislative fix.

The acceptance of a conservation easement by the U.S. Fish and Wildlife Service from the Little Sandy Hunting and Fishing Club is clerarly a violation of the Service's public trust responsibilities.

The U.S Bureau of Reclamation has for serveral years has a planning study underway in the immediate area, the Texas Big Sandy Project. The Bureau has continually coordinated it planning activities on this project with the U.S. Fish and Wildlife Service.

While Section VII Consultation and Coordination for the most part is a "one way" street, the lack of coordination concerning the acquisition of this conservation easement with other governmental agencies is, to say the least, appalling. The fact that the Fish and Wildlife Service accepted the conservation easement without consultation suggests that they were a willing participant in this fraud.

In this instance, the U.S. Fish and Wildlife Service has played fast and loose with one of the premier environmental laws of our Nation, the National Environmental Policy Act. It has clearly failed to take into consideration the effect of its action on the quality of the human environment.

Another troubling aspect of this federal action is the idea that the laws of our Nation allow a federal agency to accept an easement as part of the National Wildlife Refuge System for the exclusive use of a few wealthy individuals. Mr. Chairman, under the terms of the easement, federal officials cannot enter the property for the purposes of

maintaining and managing this portion of a National Wildlife Refuge without prior notice to these individuals.

It is our contention that the U.S. Fish and Wildlife Service has aided and abetted a small group of wealthy private citizens, the Little Sandy Hunting and Fishing Club, in circumventing the laws of the State of Texas.

This is an example of government at its worst.

Mr. Chairman, members of the Committee, we urge you not to let this action go unchallenged. If this fraud, and there is no other word for it, is allowed to be perpatrated on the citizens of Texas, it sets an ominous precedent for the citizens of this Nation.

Mr. Chairman, thank you for allowing me to present the concerns of our members to this Committee.

COMMENTS OF TEXAS PARKS AND WILDLIFE DEPARTMENT
ON H.R. 187 AND H.R. 188, 101st CONGRESS, 1st SESSION

PRESENTED BEFORE THE SUBCOMMITTEE ON FISH AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT ON JULY 11, 1989

The Texas Parks and Wildlife Department is the "state agency with primary responsibility for protecting the state's fish and wildlife resources." TEX. PARKS & WILD. CODE ANN. § 12.0011. One of the primary mechanisms for protecting those resources is through the protection of the habitats upon which they depend. Habitats vary both in terms of the fish and wildlife resources they support and in terms of their scarcity and vulnerability to disturbance and destruction as a result of development activities. The Department assigns priorities to the protection of habitat in part based on those parameters.

One habitat of particular significance both in terms of the fish and wildlife it supports and the threat of destruction is bottomland hardwoods. The importance of bottomland hardwoods is well documented. These communities are characterized by large, mature hardwood trees which provide an abundance of food, cover, and nesting habitat for wildlife. Because various land use practices such as urban and industrial development, agricultural practices, and others are encroaching upon this resource, the Department has specifically identified the need to enhance and preserve bottomland hardwoods important to waterfowl in East Texas.

A recent survey performed by the Department reveals that 63 percent of the original forested floodplain communities in Texas already have been lost. Frye, Bottomland Hardwoods -- Current Supply, Status, Habitat Quality and Future Impacts From Reservoirs, Bottomland Hardwoods in Texas, Proceedings of an Interagency Workshop on Status and Ecology May 6-7, 1986, p. 24 (available from the Texas Parks and Wildlife Department, PWD-RP-7100-133-3/87). Because the majority of the remaining bottomland hardwoods, the most valuable and diverse of this habitat, is found in the six East Texas river basins, preservation of bottomlands in these areas deserves special priority. Should all reservoirs proposed in the Texas Water Plan be constructed, East Texas river systems would directly lose 200,000 acres, or 17 % of remaining bottomlands. Indirect losses because of altered flow regimes below these dams could result in significantly increased impacts. One of these systems, the Sabine River Basin, which contains about 255,000 acres of bottomlands, includes the Little Sandy Hunting and Fishing Club, which is the subject of H.R. 188. Because various land use activities will continue to reduce the bottomland component in all East Texas river basins, land acquisition through easement, leases,

fee purchase, or other appropriate means provides one of the only methods by which this valuable resource may be protected.

In 1985, the U.S. Fish and Wildlife Service published a report entitled "Texas Bottomland Hardwood Preservation Program Category 3," listing six priority categories of bottomland hardwoods. Priority 1 areas are those which should be preserved first. The Little Sandy Hunting and Fishing Club comprises part of the Middle Sabine Bottom, which is given a Priority 1 rating. Because the Little Sandy Hunting and Fishing Club lands are recognized as some of the finest bottomland areas of the State, the Department is vitally interested in its continuing protection and management for wildlife.

In order to insure the preservation of the area for wildlife, the Texas Parks and Wildlife Department presented a statement supporting the conservation easement at the October 27,1986 meeting held in Tyler, Texas. (Attachment).

The Texas Parks and Wildlife Department fully recognizes the importance of developing water supply reservoirs. However, because of the pristine, high quality of the Little Sandy Hunting and Fishing Club lands and because of the abundance of other reservoirs in East Texas, other alternative sources of water that would allow the preservation of this area should be considered.

The Department does not believe that enactment of either of these Bills is necessary. However, in the event this Subcommittee determines otherwise, the Department offers the following specific comments on H.R. 187 and 188:

H.R. 187

H.R. 187 seems to be intended to avoid conflicts between water development projects and protection of fish and wildlife habitats, particularly bottomland hardwoods. The Department certainly agrees that unnecessary conflicts should be avoided. Unfortunately, however, remaining bottomland hardwood communities in Texas generally occur in and near stream and river valleys. As a result, conflicts are, to some degree, inevitable. Recognizing that, it is important that any procedure for resolving those conflicts accord adequate protection to all interests.

First, it is important to note that the language of this Bill is very sweeping. It purports to apply to acquisition of any water resource land by the Fish and Wildlife Service. As such, it could subvert the protections of other federal laws and, in particular, the Endangered Species Act. The Fish and Wildlife Service could be precluded from acquiring land essential to the protection or, indeed, the survival of a threatened or endangered species. This result is unacceptable.

Second, the definition of "water resource land" is unduly vague. That definition refers to "feasibility studies" but fails to define the term. At a minimum, the term must be defined in such a way that easement acquisition is not impeded unless and until a serious, detailed study of the need for and feasibility of locating a major water development project on the site has been performed. Only major water development projects such as those identified in the Texas Water Plan for construction prior to the year 2030 should be included. Minor projects designed to serve only local needs, which generally cause greater adverse environmental impact per acre-foot of water produced than regional projects, should not receive this special protection. A feasibility study should be required to include an analysis of the need for the specific project as well as an analysis of reasonable project alternatives and a determination that the site under consideration provides the best alternative. Similarly, water development projects entitled to consideration under this Bill should be limited to those designed primarily for development of drinking water supplies. Other types of water development projects will not necessarily be deserving of this special priority.

Third, the absolute prohibition on acquisition by the Fish and Wildlife Service pending approval by the legislature of the affected state seems unnecessary. Water project development would be protected adequately if fee simple acquisitions and conservation easements on "water resource lands" were made subject to a clause terminating them upon the issuance of all federal and state permits necessary for construction of the previously studied project unless the legislature of the affected state specifically approved the acquisition or easement. This would avoid the risk of losing valuable fish and wildlife protection in favor of water development projects which, for one reason or another, do not proceed to construction. Because water supply planning generally utilizes distant planning horizons, changing circumstances may render previously studied projects unnecessary or infeasible.

Fourth, the broad public access requirement may interfere with wildlife protection purposes of the fee acquisition or easement. For example, it may be necessary to close areas to public access during the breeding seasons of certain easily disturbed animals. Similarly, it may be necessary to exclude the general public from areas harboring rare or endangered plant species. This requirement should be stricken from the Bill or, at a minimum, public access should be required only to be consistent with access provided on similar non-water resource lands acquired in fee or subject to an easement held by the Fish and Wildlife Service.

Finally, the term "affected State" is unnecessarily broad. Numerous states may be "affected" in some manner by a water resource project. Approval of fee acquisition or acceptance of an easement should be required, if at all, only from the state or states in which the land is located.

H.R. 188

H.R. 188 is specifically directed at the Fish and Wildlife Service's acquisition of a conservation easement on about 3,800 acres of some of the finest bottomland hardwood habitat remaining in the State of Texas. More particularly, this Bill is directed at eliminating a perceived threat to one of many potential water development projects in East Texas. Even accepting, for purposes of argument, the validity of the proposition that acquisition of such an easement should not be allowed to interfere with the development of a needed and viable water development project, this Bill goes too far.

All that would be necessary to achieve that purpose would be an Act terminating the easement upon the granting of State and federal permits necessary to construct the Waters Bluff Dam and Reservoir Project. Instead, this Bill provides that the easement terminates on the earlier of the date a permit is applied for from the Texas Water Commission or January 1, 2000. Thus, this important easement and its concomitant protections for this unique resource are lost when a permit application is filed, even if that permit is later denied or never pursued. In fact, the easement is lost even if no permit is ever sought. Furthermore, even if a permit were granted, it is likely to occur two or more years after the application is submitted. There is no apparent justification for this unnecessary result.

Tying easement termination to the granting of necessary permits has significant advantages. First, it protects this resource until State and federal agencies have reviewed the proposed project and determined that it is needed, feasible, and in the public interest. Certainly, the easement should not be lost in favor of a project that is lacking in any of these basic attributes. Second, it avoids loss of the easement unless the project has received a serious commitment from a potential developing entity. Because under Texas water law the priority date of a water right is tied to the date an application is accepted for filing, the filing of an application can be influenced by factors other than actual need for a specific project. As a result, applications filed with the Texas Water Commission are sometimes withdrawn prior to consideration by the Commission. There simply is no reason to link the termination of this valuable easement to an event as tenuous as the filing of a permit application.

The apparent, and only reasonable, intent of this Bill and of H.R. 187 is to prevent interference of acquisition by the Fish and Wildlife Service of a fee interest or easement in a tract of land with an <u>existing</u> plan for a water development project. If that is true, the termination of this easement should be triggered only upon the issuance of permits to build the Waters Bluff Dam and Reservoir Project, as currently conceived. Accordingly, the

reference to "any other water resource project that will impact upon the land covered by the easement" is unwarranted. Water development projects conceived in the future are not entitled to an automatic priority over this valuable natural resource.

The Texas Parks and Wildlife Department appreciates this opportunity to present comments on these matters. The Department takes its role as the State's primary advocate for the fish and wildlife resources of Texas very seriously. As our human population continues to grow and conflicts between development projects and dwindling natural resources increase, a balanced and deliberate approach to the assignment of priorities is essential. Protection of our irreplaceable and indispensable natural resources should not be foregone until the efficacy and desirability of competing development projects have been established and the general public interest has been considered.

TEXAS
PARKS AND WILDLIFE DEPARTMENT
4200 Smith School Road Austin, Texas 78744

COMMISSIONERS
EDWIN L. COX, JR.
Chairman, Athens
WILLIAM M. WHELESS, III
Vice-Chairman, Houston
BOB ARMSTRONG
Austin
GEORGE R. BOLIN
Houston
WM. O. BRAECKLEIN
Dallas
WM. L. GRAHAM
Amarillo
RICHARD H. MORRISON, III
Clear Lake City
A.R. (TONY) SANCHEZ, JR.
Laredo
DR. RAY C. SANTOS
Lubbock

CHARLES D. TRAVIS
Executive Director

Texas Parks and Wildlife Department Statement on
the Proposed Land Protection Easement for the
Little Sandy Hunting and Fishing Club

The importance of bottomland hardwood habitat to wildlife species is well documented. These areas are characterized by large, mature trees which provide an abundance of food, cover, and nesting areas for wildlife. Bottomland hardwoods are dependent upon a supply of water which floods the bottoms periodically, producing a condition in which waterfowl and many other game and non-game species thrive. Unfortunately, this habitat type is disappearing at an alarming rate. Numerous land-use changes such as urban and industrial development, agricultural practices, and other uses are encroaching upon this resource. According to a 1984 study conducted jointly by the Department and the U.S. Fish and Wildlife Service, 253,000 acres of Texas bottomlands may be lost solely as a result of water development if all major proposed reservoirs are constructed. Landsat data reveal that approximately 4.2 million acres of bottomland hardwoods remain in East Texas. This represents approximately 26 percent of the estimated bottomland hardwood acreage that existed when Texas was first settled.

Recognizing the importance to waterfowl of this diminishing resource, the Texas Parks and Wildlife Department prepared a report in 1982 entitled, "The Future of Waterfowl in Texas: An Issue of Habitat". That report specifically identifies the need to enhance and preserve bottomland hardwoods important to waterfowl in East Texas. It also stresses that the Department should work closely with the Fish and Wildlife Service to catalogue, evaluate, and acquire important tracts of bottomland hardwoods.

The high quality bottomland habitats present on the Little Sandy Hunting and Fishing Club are well recognized and were first documented by the U.S. Fish and Wildlife Service in a survey initiated in 1982. An unpublished report based on this survey identifies the Middle Sabine Bottom as the Number 1 area in the state to be acquired and preserved. The Little Sandy Hunting and Fishing Club comprises a part of this area. A later report entitled "Texas Bottomland Hardwood Preservation Program Category 3", published in 1985 by the U.S. Fish and Wildlife Service, documents the results of the original survey and some additional fieldwork.

Sixty-two bottomland areas are identified in the document, and each is classified into six priority categories. The highest priority rating is given only to those areas of excellent quality that are of high value to waterfowl. These Priority 1 areas are the areas which should be preserved first. The Little Sandy Hunting and Fishing Club comprises part of the Middle Sabine Bottom, which is given a Priority 1 rating.

In the past, biologists with the Texas Parks and Wildlife Department have worked closely with the Club to develop a program to benefit wildlife and fishery resources. An intensive lake management program which includes production of the Florida strain largemouth bass has been implemented. Department wildlife biologists currently perform annual surveys of the deer population in the area and provide recommendations to the club on the deer herd. Surveys are also performed to determine the status of the American alligator on the property. In addition, the Department is planning to conduct a study to learn more about the wood duck population in the area. This study will involve the installation of wood duck nesting boxes and a monitoring program to determine their use. Late summer wood duck brood counts will also be performed, and efforts will be made to determine the maximum density of wood duck which can be maintained in the area. The sloughs, lakes, and swamp habitats on the area are ideally suited for a study of this type.

High quality habitat currently exists on the Little Sandy Club because of the protection that has been provided by the owners. Because no grazing or timber harvest has been allowed on the area, the vegetation constitutes one of the most pristine bottomland areas is the state. Oak, gum, elm, ash, and other hardwood tree species found on the area are some of the largest in the state. Large stands of giant cane also flourish in the area; this species has disappeared in areas where livestock grazing is allowed. Because protection is the key factor which provides such high quality habitat for wildlife, the Texas Parks and Wildlife Department strongly supports the non-development easement proposal. The Department appreciates the efforts of the Little Sandy Hunting and Fishing Club and offers its assistance with future management practices that will benefit fish and wildlife in the area. The Department also commends the U.S. Fish and Wildlife Service for its efforts to protect and preserve bottomland hardwoods.

Additional comments prepared by the Department on specific sections of the draft decision document will be provided to the Governor's Office.

TESTIMONY ON H.R. 187

HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Presented by

Buck Jim Wynne III, Chairman
Texas Water Commission

July 11, 1989

TESTIMONY ON H.R. 187

HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

Presented by

Buck Jim Wynne III, Chairman
Texas Water Commission

July 11, 1989

TESTIMONY ON H.R. 187

Presented to the House Subcommittee on
Fisheries and Wildlife Conservation and the Environment

By Buck Jim Wynne, III

July 11, 1989

Thank you for the opportunity to testify on H.R. 187. My name is Buck Wynne and I am Chairman of the Texas Water Commission. I would like to speak to you today about Texas' need for additional surface water resources and how full implementation of the Bottomland Hardwood Preservation Program may unduly interfere with administration of the state's water resource management program.

As a matter of background, I would like briefly to describe the role of the two state agencies in Texas responsible for water resource management: the Texas Water Commission and the Texas Water Development Board. The Texas Water Commission has primary responsibility for protecting the state's water resources.[1] I am the chairman of a three-member commission that governs the agency's activities in four major program areas: water rights and uses, water quality, water utilities, and hazardous and solid waste. Development and use of surface water in Texas is regulated by the Water Commission through the issuance and enforcement of permits to use state surface water.

[1] TEX. WATER CODE ANN. §5.012 (Vernon 1989).

While the Water Commission is the state agency primarily responsible for the regulatory aspects of water resource management is Texas, another state agency, the Texas Water Development Board, is responsible for planning and financing development of water resources to meet Texas' future water needs. The Water Development Board is mandated by the Texas Water Code to prepare and maintain a comprehensive State Water Plan. The purpose of the Texas Water Plan is to facilitate organized development of the State's water resources to ensure that sufficient surface water will be available at a reasonable cost to further the economic development of the state.

Water resources are scarce in Texas. With a growing population, many areas within the State have real and potential water supply problems. According to the Texas Water Plan, "[i]n much of the State today, available storage capacity in existing surface-water reservoirs will barely be sufficient to meet water demands during critical droughts. Additional water supplies will have to be developed to meet growing needs." [2]

In determining future water needs, the Board divided the state into eight major geographical regions. These

[2] Water for Texas: A Comprehensive Plan for the Future, Texas Department of Water Resources, Austin, 1984, Vol. 1, p. 7.

regions are shown in the map attached to your copy of my testimony. Regarding the Northeast Texas Region (region 5), the Texas Water Plan states that "surface water and ground water resources are potentially available to meet projected needs, ***if projects are planned and developed on schedule***."[3] In the Southeast Texas and Upper Gulf Coast Region (region 8), "smaller cities are having problems from lack of surface water availability and insufficient treatment, conveyance, and storage facilities."[4]

We know that development of additional reservoirs to store surface water will be necessary to meet the projected future water needs of the state. In the Texas Water Plan, the Board identified 44 major reservoir projects that will be needed by the year 2030. However, the ability of the state to develop 19 of these reservoir projects could be severely delayed or stopped altogether by full and aggressive implementation of a federal program intended to preserve waterfowl habitat in bottomland hardwood areas throughout the Southeastern United States.

In 1984, the U.S. Fish and Wildlife Service recommended actions to preserve habitat for nine waterfowl species identified as "National Species of Special Emphasis." The

[3] *Id.* at p. 10.

[4] *Id.* at p. 11.

Bottomland Hardwood Preservation Program was developed to implement the goal of preserving waterfowl habitat in Texas. The Service's plan for the Bottomland Hardwood Preservation Program identified 62 areas in Texas for possible protection, and called for acquiring land by conservation easement and adding the tracts to the National Wildlife Refuge System.

Nineteen of the major water supply projects planned for 2030 involve tracts that the Fish and Wildlife Service has identified for preservation through acquisition of conservation easements. These projects are shown in the color map attached to my written testimony. You can see how the bottomland hardwood sites outlined in red overlap the future reservoir sites identified in the Texas Water Plan. The reservoirs shown in green are projects for which permits have yet to be issued by appropriate federal agencies and the Texas Water Commission. Those shown in red are approved federal projects.

Any bottomland hardwood forest tracts that are put into the National Wildlife Refuge System cannot be used as reservoir sites. To develop a reservoir on a National Wildlife Refuge System site, the land must first be removed from the refuge system through a special Act of Congress authorizing flooding.

The Bottomland Hardwood Preservation Program, if fully implemented, would add an effectively impenetrable layer of regulation. Obtaining an Act of Congress to build a reservoir already identified by the state as vital, even in instances where no federal funds are involved, would be very time-consuming and costly to say the least. Such a requirement would also usurp the state's traditional role of planning Texas' water resource development.

The Texas Water Commission and the Texas Water Development Board work together to ensure that the state does have an adequate water supply. The Board develops long-range water plans based on population projections and water availability. The Water Commission issues permits to build reservoirs. This is a water rights permitting process which includes providing notice and public hearings on permit applications. Permits are authorized only if (1) there is unappropriated water in the proposed water supply source, (2) the proposed water use is not in conflict with any existing water rights, and (3) the proposed use is not detrimental to the public welfare. The Water Commission is responsible in the permitting process for ensuring that the development of those resources is consistent with the

important goal of environmental protection, including the preservation of wildlife habitat.[5]

As a result of amendments to the Texas Water Code in 1985, the water rights permitting process now requires assessment and consideration of effect of a proposed reservoir project on fish and wildlife habitat.[6] The Water Commission is now required to assess the effects of a reservoir development on fish and wildlife habitat in the permitting process, and may require a reservoir sponsor to mitigate the reservoir project's adverse effects on fish and wildlife habitats. The Texas Parks and Wildlife Department, as the state's fish and wildlife agency, is a statutory party to all proceedings at the Texas Water Commission incident to water rights permit applications.

One recent example of the Commission's implementation of the statutory mitigation requirements is the permit for Little Cypress Reservoir. The Little Cypress Utility District applied for a Permit to Appropriate Public Water for the reservoir in 1986. Since the project was to be financed entirely without federal funds, a federal environmental impact statement was not required. The

---

[5] See, e.g., TEX. WATER CODE ANN. §§11.147, 11.150, 11.152 (Vernon 1989).

[6] TEX. WATER CODE ANN. §11.152 (Vernon 1989).

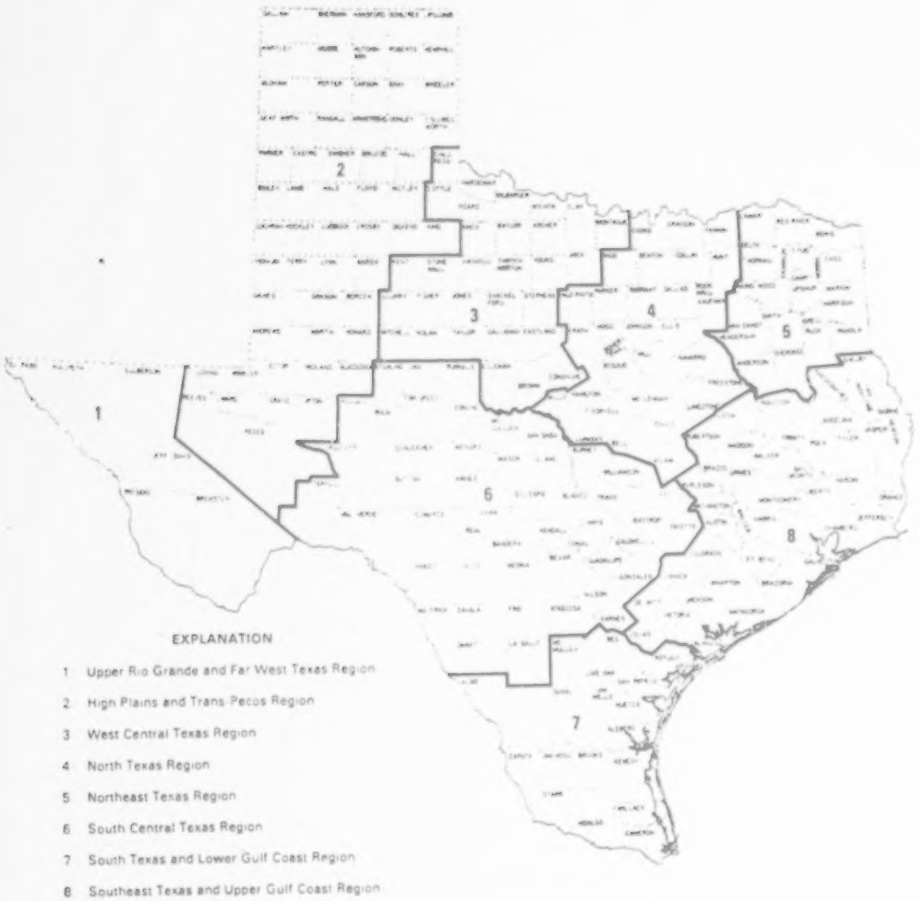
District was nevertheless required to submit an environmental assessment addressing the impact of the reservoir project on fish and wildlife habitats and the creek's water quality.

After reviewing the environmental assessment, the Water Commission staff determined that construction of Little Cypress Reservoir would inundate approximately 13,760 acres of land, including over 7,000 acres of bottomland hardwood habitat. In the final Permit to Appropriate State Water, the Commission required the Little Cypress Utility District to acquire 12,000 acres of mitigation land, of which 10,000 acres would be bottomland hardwoods of a habitat quality greater than or equal to the habitat quality of the bottomland hardwoods inundated by the reservoir. In this permit, the Commission recognized the importance of the bottomland hardwood habitat by requiring acquisition of more bottomland hardwood forest for mitigation than would be lost. This is but one example of the state's commitment to mitigating the adverse environmental impact of necessary reservoir development. It shows the procedures we have in place at the state level for that purpose are truly working.

As the federal bottomland hardwood acquisition process stands now, the U.S. Fish and Wildlife Service can accept a conservation easement and put land into the National

Wildlife Refuge System without having to consult the state. This procedure has the potential to render for naught our effort at the state level to strike the delicate balance between necessary development of additional surface water, conservation of our precious natural resources and protection of our environment.

The bill you are considering today, H.R. 187, would allow the federal conservation easement acquisition program to move forward while preserving the states' traditional role in water resource management. It would allow the states' legislatures to determine whether water resource land should be used for a reservoir or for a wildlife refuge. I urge your favorable consideration of this legislation in the spirit of balancing the respective roles of government at the state and federal level in management and protection of our nations natural resources.



EXPLANATION

1. Upper Rio Grande and Far West Texas Region
2. High Plains and Trans-Pecos Region
3. West Central Texas Region
4. North Texas Region
5. Northeast Texas Region
6. South Central Texas Region
7. South Texas and Lower Gulf Coast Region
8. Southeast Texas and Upper Gulf Coast Region

Major Geographical Regions in Texas

BOTTOMLAND HARDWOOD SITES
CONFLICTING WITH PROPOSED RESERVOIR SITES

Basin	Reservoir	Status
Brazos	Caldwell	Primary Project
	Millican	Alternative Project
Cypress	Little Cypress	Alternative Project
Neches	Rockland	Primary Project
	Weches	Alternative Project
	Eastex	Alternative Project
Red	Big Pine	Alternative Project
	Liberty Hill	Alternative Project
Sabine	Big Sandy	Primary Project
	Carl Estes	Primary Project
	Bon Weir	Primary Project
Sulphur	Cooper	Primary Project
	Parkhouse I	Primary Project
	Parkhouse II	Primary Project
	Nichols I	Primary Project
Trinity	Tehuacana	Primary Project
	Wallisville	Primary Project
	Tennessee Colony	Alternative Project
	Bedias	Alternative Project

Definitions:

Primary Project - identified in the Texas Water Plan as needed for water supply by 2030.

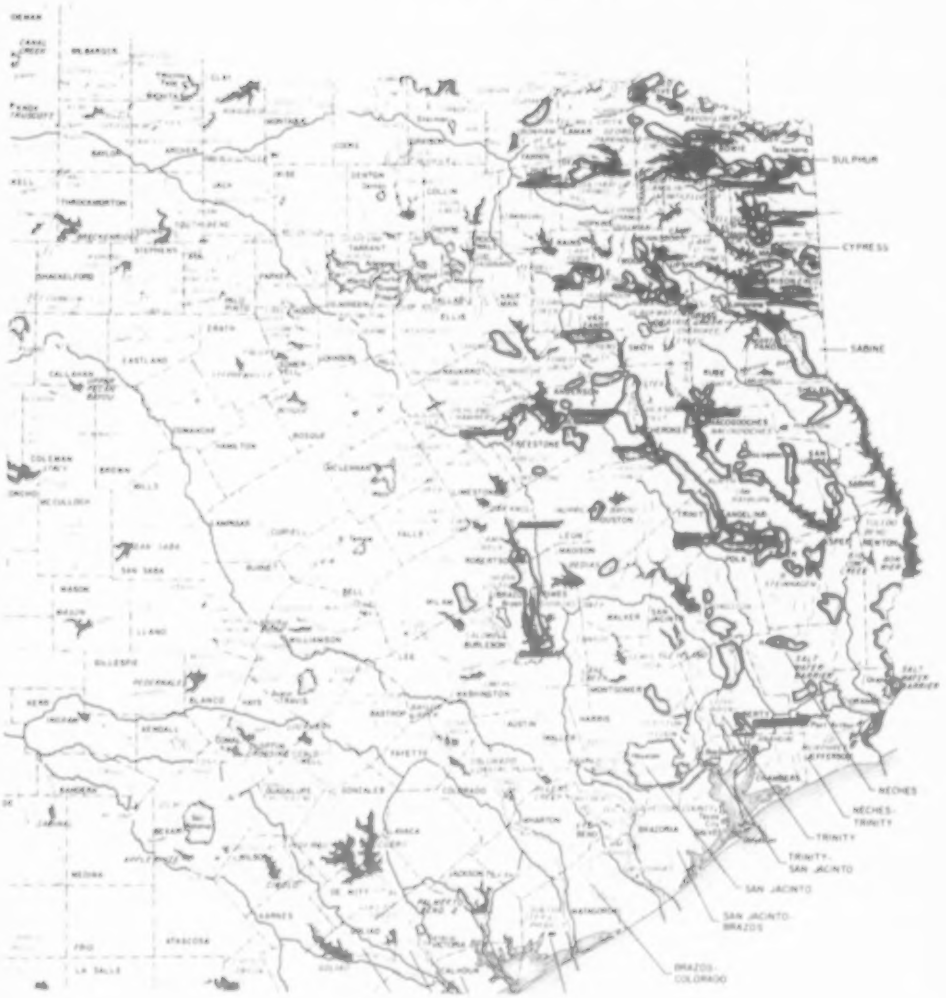
Alternative Project - alternatives to the primary projects.

Source: Surface Water Unit, Water Availability, Data and Studies Section, Texas Water Development Board, 1989.

Plate 1
Surface-Water Development
Existing Reservoirs and Reservoir Sites

USF&WS BOTTOMLAND HARDWOOD SITES

FUTURE RESERVOIRS IMPACTED BY BOTTOMLAND HARDWOOD SITES



TEXAS COMMITTEE ON NATURAL RESOURCES
601 WESTLAKE DRIVE
AUSTIN, TEXAS 78746
(512) 327-4119

COMMENTS CONCERNING H.R. 187 and H.R. 188
TO THE SUBCOMMITTEE ON
FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT
BY JANICE BEZANSON OF TEXAS COMMITTEE ON NATURAL RESOURCES
JULY 11, 1989

Texas Committee on Natural Resources (TCONR) appreciates the opportunity to comment to the Subcommittee on H.R. 187 and H.R. 188, proposed legislation by Congressman Ralph Hall (D-Texas) that would negatively impact the protection of wildlife and waterfowl habitat in the U.S. TCONR is a thousand-member conservation organization with a twenty-year history of finding solutions to environmental problems in Texas.

The Little Sandy Resource.

In December, 1986, the Little Sandy Hunting and Fishing Club donated to the U.S. Fish and Wildlife Service (FWS) a conservation easement on 3,802 acres of the best remaining bottomland hardwood forest habitat in Texas. Valued at roughly three-quarters of a million dollars, the easement protects magnificent old-growth bottomland forests and adjoining wetlands from being developed or cleared, offering refuge to tens of thousands of migratory waterfowl.

The Little Sandy Hunting and Fishing Club has protected this habitat in Wood County, Texas, since before the turn of the century, forbidding logging, livestock grazing, and other economic development. Concern that the future might bring the loss of its pristine natural quality led the 84 members of the Club to seek a method of permanent protection.

The Club acreage is prime breeding or wintering habitat for mallards, wood ducks, and numerous other migratory waterfowl, and home to threatened or endangered alligators and bald eagles. Osprey can be seen fishing in the waters of the Club and hundreds of species of native birds and wildlife take refuge there.

The Little Sandy Controversy.

The Sabine River Authority (SRA) has falsely accused FWS and the Club of conspiring to block a reservoir project needed to provide water to the people of the Upper Sabine River Basin. One of numerous potential reservoir sites in the region, the SRA-proposed Waters Bluff would, if developed, flood 40,000 acres of Sabine River bottomlands, including the Little Sandy property. It's smaller alternative, Belzora Landing Reservoir, would also inundate the easement.

No Conspiracy.

A look at the chronology of events will belie SRA's claim that the purpose of the easement was to block the reservoir. As early as 1973, biologists were formally recommending some level of protection for the Middle Sabine Bottoms (the Texas Natural Heritage Survey in "The Natural Areas of Texas"). In June of 1983 the area including Little Sandy was identified for FWS by an independent consultant as the best remaining hardwood bottomland site in Texas. The September, 1984, draft publication of FWS's Bottomland Concept Plan for Texas identified Little Sandy as a Priority 1 site and by December FWS was discussing the possibility of a Little Sandy easement with other agencies. In February 1985 the Bureau of Reclamation was notified that Little Sandy, among others, was a Priority 1 site, to discuss possible reservoir conflicts. None was mentioned by BuRec. Not until March of that year did SRA first approve Waters Bluff as a project. And not until March of 1986, six months after the conservation easement

between FWS and Little Sandy was drafted, did the Preliminary Feasibility Study on Waters Bluff appear.

What seems apparent is that SRA initiated Waters Bluff to block the Little Sandy easement!

The Relevant Water Picture.

As to SRA's claim that the water supply from Waters Bluff/ Belzora Landing is needed, the following facts help one to understand the absurdity of that claim:

(1) Much of the increased firm yield estimated for Waters Bluff/Belzora Landing would be at the expense of decreased yield in downstream Toledo Bend Reservoir. The downstream yield could be piped to the Waters Bluff site as cheaply as it could be developed on site, with very little environmental damage.

The Sabine River flow that would be impounded at the proposed site is already being impounded by the existing Toledo Bend Reservoir 80 miles downstream. One of the largest reservoirs in the country (4.4 million acre-foot capacity), Toledo Bend has a firm annual yield for water supply purposes of more than 2 million acre-feet/year. This enormous supply has lain almost unused for the 25 years since the lake was built (less than 1% withdrawn annually).

SRA's misleading claim of a 340,000 ac-ft/yr yield from Waters Bluff fails to take into account the yield which would be lost in Toledo Bend. The net result of building Waters Bluff would be to add only ≈100,000 ac-ft/yr of water supply. an insignificant increase to a basin which already yields nearly 3 million ac-ft/yr (only 200,000 of which is currently being used).

Since the cost of transporting ≈300,000 ac-ft/yr of water from Toledo Bend to the Waters Bluff damsite would roughly equal the cost of building the proposed reservoir, there is nothing to be gained by the construction of Waters Bluff and its attendant destruction of Little Sandy.

(2) There is more water available in the Upper Sabine Basin than is counted by SRA and the Texas Water Development Board (TWDB).

It is the custom of SRA/TWDB to obscure the huge water surpluses in the Sabine Basin by dividing the basin immediately upstream of Toledo Bend and referring to the upper portion of the basin as Zone 1. TWDB estimates the existing firm water supply of Zone 1 at 530,000 ac-ft/yr. This counting excludes more than 100,000 ac-ft/yr of dependably available groundwater (TWDB acknowledges its existance but does not foresee its use) and another approximate 100,000 ac-ft/yr of run-of-the-river flows currently in use by the City of Longview and the Texas Eastman Corporation, the basin's two largest water users.

600,000 ac-ft/yr would be a very conservative estimate of water currently developed in Zone 1. Since the City of Dallas owns contracts for future export of 240,000 ac-ft/yr, only 35,000 of which they are currently using, the portion of the current supply available for future use within the zone is at least 360,000 ac-ft/yr. TWDB measured the total water use within the upper basin in 1980 at 115,000 ac-ft. Clearly the basin will not need additional water resources for a very long time, if ever.

(3) The yield of existing reservoirs in the Upper Sabine Basin could be increased at a fraction of the cost of building a new one.

A study contained in a booklet sent by TCONR to the Subcommittee demonstrates that an incremental yield for Zone 1 of the Sabine Basin comparable to that from the proposed Waters Bluff Reservoir could be achieved at essentially no cost. By diverting water from the Sabine River at approximately the Waters Bluff damsite and transferring it by pipeline ≈30 miles to Lake Fork Reservoir, and then an additional 10 miles to Lake Tawakoni, the yield from these two lakes is estimated to increase as much as 200,000 ac-ft/yr.

The relative cost of this "scalping" operation can be taken as near zero, because the City of Dallas, which SRA foresees as its principal customer for Waters Bluff water, will likely build such a pipeline from Waters Bluff to Lake Fork, to link with its existing pumping facilities there. In short, a large fraction of Waters Bluff's yield (and much more than Belzora Landing's yield) could be gained for the cost of the conveyance facilities alone, avoiding the estimated $200 million capital costs of Waters Bluff and the loss of the Middle Sabine bottoms.

(4) SRA/TWDB's projections of demand for water supply in the Upper Sabine Basin are dramatically inflated.

SRA's case that additional water supply will be needed in the Upper Basin in the future rests largely on projections of future water use made at 10-year intervals by the Texas Water Development Board. These are 50-year projections, making the most extreme assumptions regarding future population growth, per capita water use, industrial growth, etc.

TWDB's estimate of in-basin use for Zone 1 shows an increase of as much as 300,000 ac-ft/yr between 1980 and the year 2030. As shown above, even this enormous and highly speculative demand might very well be met by currently existing water supplies.

To put this projection in perspective, fully half of this increased demand results from a projection of the future water use of a single industrial plant, Texas Eastman at Longview. Eastman, however, like most large industries, self-supplies its water, holding a permit from the Texas Water Commission to divert as much as 134,500 ac-ft/yr from the Sabine River, an enormous supply not currently counted by SRA as existing. Eastman apparently disagrees.

As to the general accuracy of TWDB's industrial water projections, in 1970 they forecast that manufacturing water use (mostly by chemical plants like Eastman) would increase by 25% during the 1970's. It declined by 10%. Undaunted, TWDB

predictd a 40% increase for industrial water use in the 1980's. By 1985, use had declined, and preliminary figures indicate a net decline for the whole decade.

The water development industry in Texas has sought and is seeking to gain control of any issue which might limit their unbridled access to the $1.4 billion dollars the State has designated for water development bonds. They claim the right to place water development "needs" over other legitimate economic uses of the State's available natural resources and seek exclusive control of any site which has potential for a reservoir.

Other Issues Surrounding Little Sandy.

(1) Public support. Contrary to SRA's public statements, there is widespread support in Texas for the Little Sandy Refuge. More than thirty organizations, representing many tens of thousands of individuals, have publicly supported FWS's acceptance of the easement. The Texas Parks and Wildlife Department is on record strongly supporting the easement, citing the "well documented" quality of Little Sandy.

(2) Need for bottomland preservation in Texas. An estimated 60% of Texas's pre-European-settlement bottomland hardwood forests, and even greater percentages of swampland and other riparian habitats, have already disappeared in Texas, cleared for other uses or inundated by the more-than-180 reservoirs already developed. The loss of biological diversity, support for wildlife and migratory waterfowl, and other valuable functions of bottomland forests continues to increase at a staggering rate. Unless a major initiative is undertaken quickly to preserve samples of this most diverse of all inland ecosystems, a tremendous natural resource will soon be gone. SRA criticizes as "too much land" FWS's desire to protect 250,000 acres, yet SRA destroyed almost that many acres with only one of their reservoirs.

(3) Widespread benefits. Although SRA has tried to characterize the Club's donation of the Little Sandy easement as a selfish gesture to protect their exclusive hunting rights, the benefits from Little Sandy's inclusion in the National Wildlife Refuge System are extensive. The protected breeding and wintering grounds of the Club property supports waterfowl populations which migrate to many areas of the continent. If the cloud of Waters Bluff were removed, there are other lands adjacent to Little Sandy available for acquisition, whose hunting would be enhanced by the more protected Little Sandy.

(4) Precedent. SRA refers to the Little Sandy easement as precedent-setting. In fact, FWS has for decades used the more cost-effective conveyances of less-than-fee acquisition to meet its Congressional mandate to protect waterfowl, more than 3 million acres of wetlands currently. The precedent of *removing* Little Sandy, however, could have far-reaching negative impacts.

(5) Special favor. The Sabine River Authority is asking that the Congress of the United States intervene in an exiting contract between a federal agency and a private landowner, so that they may be given preferential rights to a particular tract of land. Such intervention should be undertaken only in a case of urgent need, which SRA has not and can not demonstrate.

Compounding the Offense.

H.R. 187, Congressman Hall's companion bill to require the U.S. Fish and Wildlife Service to gain State approval of any future conservation easement which contains "water resource land", is designed to deter protection of waterfowl and wildlife habitat. By limiting FWS's potential to accept conservation easements, it can be predicted to result in less habitat protected throughout the country, and a greater cost for what is protected.

The Fish and Wildlife Service has stretched limited tax dollars to meet its Congressional mandate for protecting waterfowl by entering into agreements with private landowners whose property contains valuable wildlife habitat. Costing less than fee-simple acquisition, conservation easements and similar conveyances insure the protection of existing habitat while allowing land to continue its primary economic function, a "win-win" situation. Acknowledgement of the value of such agreements has come from the many states, including Texas, which have incorporated conservation easements into the body of their state laws.

FWS is mandated by a number of Congressional acts and international treaties to enhance wildlife and waterfowl populations. As the effects of human growth press ever more sharply on our diminishing natural resources, meeting these goals becomes ever more vital.

H.R. 188 would, as a minimum, add an additional layer of bureaucracy to the already-burdened acquisition process. At a time when the scope of wildlife, particularly waterfowl, protection needs to be broadened to reflect its international character, to place such decisions under the more limited jurisdiction of a single state would be a step in the wrong direction.

Conclusion.

H.R. 188 would remove protection of one of the few remaining old-growth bottomlands in Texas so that the Sabine River Authority could build an unneeded, uneconomical, unuseful reservoir at huge taxpayer expense. It is a frivolous piece of legislation and should be treated accordingly.

H.R. 187 is an attempt by the water development industry to control bottomland habitat preservation in Texas. It has no place in federal law.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

APR 7 1987

In Reply Refer To:
FWS/RE/3301962

Honorable Orrin G. Hatch
United States Senate
Washington, D.C. 20510

Dear Senator Hatch:

This responds to your March 6, 1987, letter on behalf of the Western States Water Council (file number H-L06781). Mr. Craig Bell, Executive Director of the Council wrote you on January 30, 1987, concerning three policy positions the Council had adopted at their recent quarterly meeting. One of those positions involved the acceptance, by the U.S. Fish and Wildlife Service (Service), of a conservation easement on the Little Sandy Hunting and Fishing Club in Texas.

The Service has accepted the easement donation from the Little Sandy Hunting and Fishing Club. The easement, which was donated by the Club at no cost to the Federal Government, protects 3,802 acres of bottomland hardwoods and associated habitats. The terms of the easement require the Club to maintain this acreage as habitat for migratory waterfowl and the many other species of wildlife found there.

Because of the potential conflict with water development, I considered this matter carefully before accepting the easement. It is certainly commendable and quite helpful, considering the budget situation, for a private group to donate such a valuable property. However, I do not want the Service to frustrate unnecessarily the water development objectives of Texas or any State. In this instance, the Final Environmental Assessment (copy enclosed for ready reference) makes a strong argument that many water development alternatives to Waters Bluff Reservoir are available. Incidentally, Waters Bluff is not included in the Texas Water Plan. Because the donation involved maintaining the status quo in terms of physical disturbance to the land, and water development was not needed during the planning horizon or precluded forever, an Environmental Impact Statement was not required.

Water development interests are concerned that the land protection proposed in the Service's Bottomland Hardwood Concept Plan may seriously threaten many reservoirs in east Texas. I feel these concerns are unfounded. The Service has surveyed east Texas and located the best bottomland hardwood areas. The fourteen very best areas, designated priority one, contain 460,444 acres. Eight of those areas conflict with potential water development sites, but our

goal, which also involves the Texas Parks and Wildlife Department, Oklahoma Department of Wildlife and others, is to protect 250,000 acres in Texas and Oklahoma. We, therefore, have considerable flexibility to meet our goal with a minimal impact on potential water development projects.

In addition, the process of protection assures that the public, including river authorities, will have considerable opportunity to present their case for other land uses. Most acquisitions will involve at least the purchase of an easement requiring appropriated funds and concomitant congressional approval.

Finally, while reservoir development inundates bottomland hardwoods making them unavailable for waterfowl and unsuitable for a refuge, establishment of a refuge does not physically preclude a reservoir. If future water demands indicate an obvious need for a reservoir, Congress can reverse the decision that established a refuge.

Frequently, reservoir proponents suggest future refuges be located on the periphery or the upper end of reservoirs. While this idea is not without some merit, its applicability is limited. The purpose for our refuge is to protect the mast-bearing hardwood trees that provide the nutritious food source to carry waterfowl through the winter. These trees are 10-15 years old when they start producing and do not reach their peak until 50 to 100 years. They live 200-300 years under favorable conditions. Our program will establish refuges to manage high quality hardwood areas for current and long-term productivity. In summary, I believe the conflicts will be few. Where they occur, the issue will be resolved with full public involvement.

Thank you for your interest in the Service's Bottomland Hardwood Protection Program. If you would like additional information, please do not hesitate to contact me or Regional Director Spear in Albuquerque.

Sincerely,

Frank Dunkle

DIRECTOR

Enclosure

ORRIN G. HATCH
UTAH

DEE V. BENSON
ADMINISTRATIVE ASSISTANT

135 RUSSELL SENATE OFFICE BUILDING
TELEPHONE (202) 224-5251

United States Senate

WASHINGTON, DC 20510

COMMITTEES
LABOR AND HUMAN RESOURCES
JUDICIARY
INTELLIGENCE
OFFICE OF TECHNOLOGY ASSESSMENT
SELECT COMMITTEE ON SECRET MILITARY ASSISTANCE TO IRAN AND THE NICARAGUAN OPPOSITION

May 19, 1987

Mr. D. Craig Bell
Executive Director
Western States Water Council
220 South 200 East
Salt Lake City, Utah 84111

Dear Mr. Bell:

This letter is in response to your letter of January 30, 1987.

After receiving your letter, I contacted the United States Department of the Interior for their input on your concerns over the Little Sandy Hunting and Fishing Club easement.

I am enclosing their response for your benefit. I am also enclosing a copy of the final Environmental Assessment and Decision Document, Proposed Land Protection for the Little Sandy Hunting and Fishing Club easement.

Thank you for your letter. I appreciate your keeping me apprised of your concerns.

Sincerely,

Orrin G. Hatch
United States Senator

OGH:zz

Enclosures

POSITION
of the
WESTERN STATES WATER COUNCIL
Regarding
U.S. Fish and Wildlife Service Acquisition of
Nondevelopment Easements
January 22, 1988

WHEREAS, a private hunting and fishing club in Texas has donated to the U.S. Fish and Wildlife Service a permanent easement to utilize their land as a national wildlife refuge, while retaining exclusive hunting privileges on such land and while continuing to exclude the public from such land; and

WHEREAS, the U.S. Fish and Wildlife Service did not coordinate its review of the proposed acquisition under the National Environment Policy Act with affected federal, state, regional and local entities; and

WHEREAS, the draft environmental assessment prepared by the U.S. Fish and Wildlife Service does not adequately consider the effects of the acquisition on the Waters Bluff Reservoir project and future water needs of the State of Texas; and

WHEREAS, suitable reservoir sites in the West are limited and the precedent established by this acquisition could have serious effects on other proposed reservoir sites throughout the western states; and

WHEREAS, the Fish and Wildlife Service has nevertheless proceeded to acquire the nondevelopment easement at the Waters Bluff Reservoir site and to grant exclusive hunting privileges to the private hunting and fishing club; and

WHEREAS, the Western States Water Council is concerned about the potential westwide application of this action by the U.S. Fish and Wildlife Service.

NOW THEREFORE BE IT RESOLVED that the Council urge Congress to enact legislation which would remedy the problems raised by the actions of the Fish and Wildlife Service in this matter.

STATEMENT

OF THE

TEXAS WATER DEVELOPMENT BOARD

REGARDING

HR 187

AND THE

ESTABLISHMENT OF CONSERVATION EASEMENTS

IN THE

STATE OF TEXAS

PRESENTED TO THE

SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION AND THE ENVIRONMENT

COMMITTEE ON MERCHANT MARINE AND FISHERIES

U.S. HOUSE OF REPRESENTATIVES

JULY 11, 1989

Mr. Chairman and members of the subcommittee, my name is Walter W. Cardwell, III. I am Chairman of the Texas Water Development Board. On behalf of the State of Texas, I would like to express our appreciation for the opportunity to testify before this subcommittee to address the potential for conflicts between the federal action to establish environmental preserves and the rights of a State to develop and manage its water resources.

The Texas Water Development Board is the state agency given primary responsibility for the planning and financing of water resource development projects in Texas. Texas law directs the Texas Water Development Board to prepare and maintain a comprehensive State Water Plan for the orderly development and management of the State's water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire State. In the development of this plan, the Board must consider many factors, including upstream and downstream water rights, impacts on the environment, impacts on water quality, and the effects on bays and estuaries, flood protection, and navigation.

The most recent State Water Plan, Water for Texas - A Comprehensive Plan for the Future, was adopted in 1984. This action culminated a three-year effort to prepare an up-to-date plan that would serve as a flexible guide for meeting Texas' water needs for the 50 years between 1980 and the year 2030 that would be acceptable to the voters. A broad-based public involvement program was used in the development of the Water Plan, as is described in the attached Appendix 1.

In considering HR 187, this subcommittee should focus on the basic issues of a state's control over its water resources, which has been a concept generally recognized by Congress. This ability of a state to control the uses of its resources and to balance water development and environmental concerns is threatened when federal agencies, such as the U.S. Fish and Wildlife Service, can block the use of a water resource by acquisition of a refuge easement without significant input from the State. We urge you to develop an open process that would not allow a federal program to unilaterally restrict the State's potential to serve its citizens.

Reconciling this new Federal initiative with water planning in Texas is important since 19 of the 44 major reservoir sites included in the State Water Plan lie within areas identified for possible protection under the U.S. Fish and Wildlife Bottomland Hardwoods Preservation Program. These 19 potential projects represent more than 75 percent of the remaining State water supplies that are suitable for development to meet future needs. If the U.S. Fish and Wildlife Service obtains an easement or fee title to such sites, Congressional approval would be required to release the site for water development. This moves the decision on local projects from the state to the federal government.

One solution would be to allow subsequent local condemnation of any U.S. Fish and Wildlife Service conservation easement if a conflicting water development project later receives a permit from appropriate state agencies and approval under the existing federal Section 404 regulatory program. This process will guarantee both a state and federal forum on the water use and environmental

issues, and provide the states with a continued strong voice in determining the management of its resources.

The Texas Water Development Board considers that existing processes in Texas and at the federal level are adequate to balance any competing demands between water development and environmental concerns. In our State, the Texas Water Commission is charged with water resources administration and water-quality protection, while the Texas Water Development Board has responsibility for State water planning and financing functions which are specified in the Texas Water Code. The Texas Department of Health has responsibility to protect the public health through regulation of the quality of drinking water, the Parks and Wildlife Department manages programs for the development and protection of fish and wildlife resources, regulates fishing and hunting, and plans and operates outdoor recreation facilities. The Texas Parks and Wildlife Department has party status in matters which come before the Texas Water Commission that pertain to water resource development, such as water rights and reservoir development. Other State agencies, including the Texas Railroad Commission, the General Land Office, and the Texas State Soil and Water Conservation Board have significant programs and/or regulatory authorities pertaining to water management in Texas.

At the Federal level, Federal agencies have been and continue to perform significant planning, developmental, financing, and regulatory roles in water resources programs of Texas. Under Section 10 of the River and Harbor Act of 1899, the U.S. Army Corps of Engineers is directed by Congress to regulate all work or structures in or affecting the course, condition, or capacity of

navigable waters of the United States. The Corps is also directed by Congress, under Section 404 of the Clean Water Act, to regulate the discharge of dredged and fill material into all waters of the United States, including their adjacent wetlands. The U.S. Fish and Wildlife Service provides environmental resources information and recommendations for mitigating impacts of federal projects in accordance with Section 2(a) of the Fish and Wildlife Coordination Act. The U.S. Environmental Protection Agency, the U.S. Geological Survey, the Bureau of Reclamation, the Soil Conservation Service, National Marine Fisheries, National Oceanic and Atmospheric Administration, and other federal agencies play major roles in Texas water resources, planning, development, and regulation. We believe that the expertise represented by these state and federal agencies and the permitting processes at the state and federal level can best work together to resolve competing uses of the water resources of this State.

In summary, it is our view that Texas has administrative and regulatory procedures that are appropriate to Texas conditions and that are available on a continuous basis to deal with changing conditions and with environmental as well as developmental interests. The focus of such decisions regarding water resources should remain with the states, and not be unilaterally limited through decisions of one federal agency. Involvement on a federal level continues to be assured through existing federal permit procedures. With the exception of actions under the Bottomland Hardwoods Preservation Program, the current balance between state and federal control provides both entities with adequate but not exclusive control over the decision-making process, and should be maintained.

APPENDIX I

Development of the 1984 Texas Water Plan

The adoption in September 1984 of the most recent State Water Plan, Water for Texas - A Comprehensive Plan for the Future culminated a 3-year effort to prepare an up-to-date plan that would serve as a flexible guide for meeting Texas' water needs for the 50 years between 1980 and the year 2030 that would be acceptable to the voters.

A broad-based public involvement program was conducted early in 1982 to obtain citizens' views and ideas regarding Texas water problems and solutions. A comprehensive document was prepared which identified and described basic water policy issues in the State. This document was widely distributed for public review and comment. Public opinion was then collected through 13 public meetings, from written comments sent to the Department, from personal interviews with 187 community leaders and water resources professionals, and from a professionally-conducted public opinion poll.

The results of these efforts were considered by a Governor's Task Force on Water Resources Uses and Conservation. About 100 community leaders and water professionals from all parts of the State served on the Task Force. The Task Force developed recommendations based on results obtained from the public input program regarding water-quality protection, water conservation, public education, environmental protection, water-supply development, flood protection, water importation studies, water management, and State participation in water financing. A special committee of the Texas Municipal League recommended that a State water plan include and emphasize a program of State financial

assistance to individual communities for sewage treatment and water-supply development. The special committee also encouraged State support for research and planning, public education, and flood control.

To the extent possible, the work to amend the Texas Water Plan was based upon the public input and the committee recommendations. Using the latest information available, Board staff revised and updated projections of population and economic growth for the period 1980 through 2030 for each county and for most cities of Texas in 10-year increments. From these projections, estimates were made of water supply and sewage treatment needs in each area of the State. Once needs were identified, the general locations, approximate dates of construction, and construction costs were estimated for individual sewage treatment and water-supply projects required to meet municipal and industrial needs in future years. The projections and the projects were included in a draft planning report which was printed and distributed in February 1983 for public review and comment.

Eight regional hearings were conducted during the summer of 1983 to obtain public comments and recommendations on the proposed revisions to the 1969 Water Plan. The comments and recommendations were considered in the preparation of the final draft document, which was released by the Department in July 1984. On August 16, 1984, the Texas Water Development Board conducted a public hearing in Austin on the water rights aspects of the proposed amended plan and found that existing water rights had been adequately considered, and that the proposed plan had taken into account modes and procedures for equitable adjustment of water rights affected by the plan. On September 20, 1984, the

Board formally adopted the proposed amended plan as the official State Water Plan. The result is a two-volume publication which outlines methods for meeting State needs for water conservation, water-quality protection, water-supply development, public education, and research. The plan also includes policy recommendations for future action.

Through this planning effort, 65 major reservoir project sites have been identified for potential development to meet the future water demands of Texas. Forty-six of these potential reservoir sites were proposed by local political subdivisions which had prepared plans to meet the water demands in their service area. The plan schedules 44 of these potential projects for construction during the period 1990 through 2030.

Several of the policy recommendations contained in the 1984 Water Plan were enacted by the Sixty-Ninth and Seventieth Legislatures, in 1985 and 1987, respectively. In a statewide referendum in November 1985, Texas voters approved two constitutional amendments which authorized and financed many of the recommendations set forth in the Water Plan.

COMMITTEES:
ENERGY
BUDGET AND OVERSIGHT
VICE CHAIRMAN
NATURAL RESOURCES
BUDGET AND OVERSIGHT

The House of Representatives
P.O. BOX 3910 • AUSTIN • 78769-3910 512-463-0750
JERRY YOST • DISTRICT 7 • GREGG COUNTY • LONGVIEW, TEXAS

July 7, 1989

JUL 10 1989

WASHINGTON

The Honorable Gerry E. Studds
Chairman, House Subcommittee on Fisheries
and Wildlife Conservation and the Environment
237 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I appreciate the opportunity to submit written testimony in support of HR 187 and HR 188.

For the record, I'm Jerry Yost, State Representative District 7, Gregg County, Texas. As a member of the Texas House Natural Resources Committee, and Chairman of the Subcommittee on Water Districts, my remarks reflect both a local, as well as a statewide, perspective with regard to your deliberations of these two measures.

On October 27, 1986, I had the opportunity to present testimony at a hearing in Tyler, Texas, conducted by the U.S. Fish and Wildlife Service. I have included a copy of that testimony for the record, and I believe it is relative to this committee's proceedings.

The result of those hearings has necessitated introduction by Congressman Hall of the two bills now under consideration. I am hopeful that our efforts will be successful in initiating your positive action to secure their passage.

Consideration of environmental and economic concerns must strike a reasonable balance. Ultimately, the lives and livelihood of hundreds of thousands of people in East Texas, as well as the collective population of the entire state and of other states, will be affected by the decisions you make here.

Although I emphatically disagree with the decision by the U.S. Fish and Wildlife Service that has brought us to this point, I can fully understand their desire to make decisions that correspond to their mission as they see it.

DISTRICT OFFICE: P.O. BOX 3306; LONGVIEW 75606; 214/297-8488; ELIZABETH MURPHY - LEGISLATIVE ASSISTANT

However, we are dealing with issues that go beyond the scope of their mission and require the collective wisdom of not only those elected to initiate national policy, such as yourselves, but also those of us elected at the state level in representing the ultimate needs of our constituents.

The precedent now established by the U.S. Fish and Wildlife Service's acquisition can and will have long-term and possibly irrevocable negative effects on a state's ability to plan for future utilization of its own water resources. That, I believe, is the crucial question you are being asked to resolve.

I can assure you that we in Texas take our responsibilities in dealing with our water resources as one of the most serious challenges facing our state. Population growth, economic development, sustainment of the quality of life, and balancing these three concerns with our natural environment is tantamount to our survival, not only as a state, but as a nation. Texas stands ready, as always, to work within the framework of national policy as established by this Congress on all issues. I would, however, ask that that framework be one molded through legislative initiative and not agency mandate, whether they be state or federal agencies.

Realizing the probable conflict of individual agency missions on the total question of water resources, we recently enacted legislation to correlate and coordinate information by those several agencies within Texas to avoid those conflicts. This legislative initiative will be successful, but it will serve little purpose if we cannot look to your committee to establish the ultimate right of state legislatures whose role must be an integral part of those decisions affecting our water resources.

The accountability of those actions and subsequent decisions must be entrusted in the locally elected state legislatures, whose response and responsibilities must reflect on the broader scope of this or any issue. Mr. Chairman and members, I thank you for your time and thoughtful consideration of these vitally critical measures and ask for your favorable vote.

Sincerely,

Jerry Yost
State Representative

JY/lmc

City of Greenville
P. O. Box 1049
Greenville, Texas 75401
Founded 1846
214-457-3100

February 9,1988

Texas Water Development
1700 N. Congress Ave.,
Austin, Texas 78711- 3231

Dear Sirs:

Over the last few months, the City of Greenville has become aware of a situation involving the Sabine River Authority and the U.S. Fish and Wildlife Services regarding the proposed Water's Bluff Reservoir. As we understand it, efforts to block the development of the reservoir have been made by the Little Sandy Hunting and Fishing Club by donating some 3800 acres of land to the U.S. F.W.S. for a perpetual non-development easement. We view this as a major threat to the development of a needed water resource in Texas.

We feel that it is critical that additional sources of water be developed in our area and that the Texas Water Plan should include all potentially viable reservoirs. We, therefore, urge the Water Development Board to include the Water's Bluff Reservoir and its alternative, the Belzora Landing Reservoir, in the State Water Plan. We further encourage the Board's support in the development of this reservoir project.

Sincerely,

Bill Morgan
Mayor

BM/jl

RESOLUTION NO. 88-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE, TEXAS, OPPOSING THE ACQUISITION BY THE UNITED STATES FISH AND WILDLIFE SERVICE OF THE LITTLE SANDY HUNTING AND FISHING CLUB EASEMENT; AUTHORIZING INTERVENTION IN LAWSUIT; SUPPORTING INCLUSION OF THE WATERS BLUFF RESERVOIR IN THE TEXAS WATER PLAN; AND, SUPPORTING LEGISLATION IN THE UNITED STATES CONGRESS

WHEREAS, the United States Fish and Wildlife Service has acquired a perpetual non-development easement covering 3,802 acres of property owned by the Little Sandy Hunting and Fishing Club located in Wood County, Texas; and,

WHEREAS, the easement acquired by the United States Fish and Wildlife Service is situated on property which is not open to the public for any purpose and continues to be reserved for the exclusive use of the Little Sandy Hunting Club, a private club for members only; and,

WHEREAS, the Waters Bluff Reservoir site has been identified in the updated master plan of the Sabine River Authority as a viable surface water supply reservoir to meet the projected needs of the residents, industries and communities within the Sabine River Basin and its service area; and,

WHEREAS, the acquisition of the easement by the United States Fish and Wildlife Service will effectively destroy the opportunity for development of the Waters Bluff Reservoir project because it is within the Waters Bluff Reservoir site; and,

WHEREAS, the Sabine River Authority filed suit on March 19, 1987, against the United States Department of the Interior, the United States Fish and Wildlife Service and the Little Sandy Hunt and Fishing Club in the United States District Court for the Eastern District of Texas, Texarkana Division, challenging right of the Fish and Wildlife Service to acquire the easement; and,

WHEREAS, on May 12, 1987, Honorable Ralph Hall introduced HR 2381 and HR 2382 in the United States House of Representatives to prevent the Department of Interior agencies from taking control of land for purposes of environmental preservation or enhancement without the express prior consent of the legislature of the affected state; and,

WHEREAS, the actions taken by the United States Fish and Wildlife Service in acquiring the easement have created an unwise precedent for the obstruction of additional water supply sources in the State of Texas;

NOW, THEREFORE, BE IT RESOLVED BY THE City COUNCIL OF THE City OF GREENVILLE, TEXAS:

1. This City is opposed to the acquisition by the United States Fish and Wildlife Service of the Little Sandy Hunting and Fishing Club easement.

2. The City supports the Sabine River Authority in its suit against the United States Fish and Wildlife Service, et al, pending in the United States District Court for the Eastern District of Texas, Texarkana Division, and agrees to intervene either individually or jointly with other East Texas entities in support of the Sabine River Authority's position and to cooperate fully with the Sabine River Authority and its counsel in any activity undertaken by the Authority to oppose the acquisition of the easement.

3. This City supports the passage of HR 2381 and HR 2382 and the Mayor or City Manager of this City is authorized and directed to advise Senator Lloyd Bentsen, Senator Phil Gramm,

Congressman Ralph Hall, Congressman Jim Chapman and other appropriate members of the United States Congress expressing our support for this legislation.

4. The City supports the inclusion of the Waters Bluff Reservoir and its first stage alternative, the Belzora Landing Reservoir, in the Texas Water Plan, and the City Secretary of this City is authorized and directed to notify the Governor, the Texas Water Development Board and Texas Water Commission of this City's support of the inclusion of said project in the Texas Water Plan.

ADOPTED, this the 9th day of February, 1988.

Myrna L. Gilstrap

Myrna L. Gilstrap, Mayor Pro Tempore

ATTEST:

Pat Adams

Pat Adams, City Secretary

JUL 10 1989

NORTH TEXAS MUNICIPAL WATER DISTRICT
P. O. DRAWER C
WYLIE, TEXAS 75098
PHONE NO. 442-5405

REGIONAL SERVICE THROUGH UNITY

July 3, 1989

Chairman Gerry E. Studds
House Office Building,
Annex 2, Room 531
Washington, D. C. 20515-6233

RE: H. R. 187
H. R. 188

Dear Sir:

The North Texas Municipal Water District (NTMWD) understands the Committee on Merchant Marine and Fisheries Subcommittee on Fisheries and Wildlife Conservation and the Environment will on July 11, 1989 hear from certain witnesses concerning H. R. 187 and H. R. 188. These bills are of importance to all people concerned about the environment and the ability of local and state government to provide a safe and dependable source of potable water. Due to the heavy work schedule associated with providing potable water to approximately 800,000 people in a summer month and knowing the busy schedule of the committee the NTMWD has prepared this brief letter in support of the two bills.

The water related and environmental agencies have worked in Texas in relative peace and harmony for the last few years. In the opinion of the NTMWD this improved working relationship benefited the people and the environment in which we all share. Being able to establish a legislative framework is a difficult and thankless task as proponents of all the various special interests will claim the system provides an advantage to others. The specific issue relating to the "Little Sandy Hunting and Fishing Club" creates a rather unusual situation which should require legislative review and correction.

It appears that a few wealthy property owners were seeking a way to halt the development of a water supply reservoir and developed a program by using a Federal agency to do just that by recruiting involvement with the Department of the Interior - United States Fish and Wildlife Service.

This easement simply allows the club to continue to exclude

Chairman Gerry E. Studds
House Office Building,
Annex 2, Room 531
Washington, D. C. 20515-6233

the public from the property and allow the members to continue to kill the various forms of wildlife on the property for their personal gain. The NTMWD has a difficult time understanding why any federal, state or local governmental agency should participate in any manner in this type of arrangement. Often acquisition efforts bring about both public access and preservation of wildlife. The acquisition of the Little Sandy Hunting and Fishing Club easement does neither. If the USF&W is going to spend public funds to maintain this exclusive club it certainly raises a question of appropriateness of the expenditure. If it is not going to appropriate any funds or manpower in relationship to the property, why are they receiving the easement?

It appears a legislative correction needs to be accomplished to prevent this type of preference in the future and the continued subsidy of a few wealthy property owners under a guise of wildlife protection when instead they are simply trying to stop a public project.

Sincerely,

CARL W. RIEHN
Executive Director

CWR:md
CC: Congressman Ralph M. Hall
Congressman Jim Chapman
Congressman Steve Bartlett
Mr. William Woodward
Mr. Sam Collins, Sabine River Auth. of Texas

JUL 10 1989

Sportsmen Conservationists of Texas

Also known as Sportsmen's Clubs of Texas

EXECUTIVE OFFICES • 311 VAUGHN BUILDING • AUSTIN, TEXAS 78701

State Affiliate
National Wildlife Federation

ALAN ALLEN
Executive Director
512/472-2267

JEFFREY L. McCOWN
Administrative Director

OFFICERS
Tom Martine, President, Austin
Michaux Nash, Jr., Pres. Elect, Dallas
Leon Stone, Treasurer, Austin
Grey Hill, Secretary, Smithville
Laurin Currie, Imed. Past Pres., Austin

VICE PRESIDENTS
John A. Kubena, Round Top, III
J. Ed Morgan, Jr., Plum, III
Joe Tom White, Wichita Falls, IV
Charles M. Oliver, Dallas, V
Mrs. Pat Auld, Kerrville, VII
Ed Strayhorn, Round Rock, VII
Louis Stumberg, San Antonio, VII
P.D. Fullwood, Corsicana, VII
Ed Cooper, Santa Rosa, X

DIRECTORS
Region I
Warren Kohls, Halsted
Ransom Galloway, Lubbock
Region II
Bill F. Cummings, Austin
Abe Turner, Haskell
Region III
Steve Stark, College Station
Ed Ahrich, Lake Jackson
Region IV
Lee Anderson, Wichita Falls
Joe Tom White, Wichita Falls
Region V
Duane Smith, Grand Prairie
W.L. Young, Arlington
Region VI
Roger H. Godwin, Dallas
W.L. Garland, Grand Saline
Region VII
John A. Patton, San Antonio
Dr. Bill Darlek, Austin
Region VIII
P.D. Fullwood, Corsicana
Don Cooper, Lindale
Region IX
A. Breaux, Port Arthur
John Eberling, Lumberton
Region X
Gordon Nix, Harlingen
Wayne O. Dunlap, Port Lavaca

At-Large Directors
Cecil Hopper, Houston, III
Bob McElroy, Spring, III
John Fortner, Dallas, IV
Ed Davis, Duncanville, V
Bill Roth, San Antonio, VII
Stan Studer, San Antonio, VII
Robert Neal, Jr., Pineland, IX
Ed Stedman, Beaumont, IX
Calvin Bentsen, McAllen, X
Bill LeBlanc, Rockport, X

July 6, 1989

Gerry Studds, Chairman
Subcommittee on Fisheries
& Wildlife Conservation
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Studds:

The Sportsmen Conservationists of Texas (SCOT), a 33-year-old, 30,000-member, statewide nonprofit wildlife conservation wants you to know that we oppose HR 187 and HR 188 by Congressman Ralph Hall.

We request that you make our opposition known to the members serving on your subcommittee.

SCOT also asks that you and the other subcommittee members oppose these resolutions on the grounds, among others, that they undermine landowner rights to use land in the manner deemed most beneficial by the landowner.

We oppose these resolutions also because of the following:

* Valuable bottomland hardwoods are being destroyed at a rapid rate and are a priority item for the Texas Parks and Wildlife Department and the U.S. Fish and Wildlife Service in Texas; Little Sandy Hunting & Fishing Club holds some of the very best bottomland hardwoods left in the nation.

* Passage of HR 187 would mean that some Texas governors could save valuable bottomland areas through conservation easements, but others could doom them forever. Unguided politics should not rule conservation, wise thought should; the implementation of a conservation easement important to the entire nation should not depend on the changing bent of governors.

* To SCOT's knowledge, the quality or type of

wildlife and fisheries habitat which might be affected by a reservoir has never been given significant consideration when reservoir construction is being deemed feasible. The sole criteria instead, is to find a site where it is most inexpensive (construction-wise) to build a reservoir which will maximize water impoundment. Sadly, this means the very best bottomland habitats are the first to be inundated.

There seems to be very little real, current need for either of the reservoirs which would drown the land owned by the Little Sandy Hunting & Fishing Club. Cheaper alternatives exist for other water sources, and a $750,000 gift to our nation is threatened.

We hope you and the members of your Subcommittee will not pass HR 187 or HR 188 out of subcommittee.

Sincerely,

Alan Allen
Executive Director

AA/jm

WORSHAM, FORSYTHE, SAMPELS & WOOLDRIDGE

THIRTY-TWO HUNDRED 2001 BRYAN TOWER

DALLAS, TEXAS 75201

TELEPHONE (214) 979-3000

M. O. SAMPELS
ROBERT A. WOOLDRIDGE
NEIL D. ANDERSON
SPENCER C. RELYEA
RONALD H. HANSON
J. DAN BOHANNAN
TRAVIS E. VANDERPOOL
JUDITH R. JOHNSON
RICHARD L. ADAMS
DAVID C. LONERGAN
JOHN W. McREYNOLDS
THOMAS F. LILLARD
ROBERT K. WISE
TIMOTHY A. MACK
ROBERT H. FILLMORE
WM. STEPHEN BOYD
MARK E. WASSEN

ROBERT GROOVER III *
CHRIS R. MILTENBERGER
ROBERT P. OLIVER
JOE A. DAVIS
ERIC H. PETERSON
WALTER W. WHITE
L. SCOTT AUSTIN
BLAKE L. BECKHAM
W. STEPHEN COCKERHAM
TRACY COMBS FLANIGAN
DAVID T. BRIGHAM
DAVID H. TAYLOR
ANGELA AGEE HATTON
DAVID P. POOLE
KIMBERLY A. MICKLAY

JOE A. WORSHAM
(1924-1976)

OF COUNSEL
JOS. IRION WORSHAM
EARL A. FORSYTHE

TELECOPIER: (214) 880-0011

* ADMITTED IN DISTRICT OF COLUMBIA ONLY

July 5, 1989

The Honorable Gerry Studds
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman:

As a member and pro bono attorney for Little Sandy Hunting and Fishing Club, I would like to comment briefly on H.R. 188. This bill, which would nullify the easement granted by Little Sandy to the United States, is scheduled for a hearing before your Sub Committee on Fisheries and Wildlife in the near future, according to my understanding.

The federal Fish and Wildlife Service, in its efforts to preserve unique bottomland properties, became interested in the Little Sandy area several years ago, well before a prospective Waters Bluff reservoir was announced by Sabine River Authority. The Service, pursuing its program, sought and obtained from Little Sandy a perpetual conservation easement.

The Little Sandy area has been pronounced to be the finest remaining bottomland hardwood tract in the state of Texas. It has four trees which have been certified as the largest of their kind in the state of Texas. One, I believe, is the largest in the United States. This is a pristine bottomland with trees hundreds of years old, natural grasses, forbs, sedges, and other vegetation, which constitute a resource of irreplaceable value.

Only if there were a real necessity for water should such a natural resource be destroyed. If such a real emergency situation existed, Little Sandy would not want to stand in the way, but such has not been demonstrated. Waters Bluff has not been approved by the Texas Water Development Board and is not in the Texas Water Plan. No permit for it has been issued by the Texas Water Commission nor has an application been filed. There is no funding for it and it is my understanding that the SRA Board of Directors has not even given final approval.

Nothing will be done with the land as the situation now stands. It will continue its pristine character in perpetuity. There is no occasion for Congress to act now. If the need ever becomes apparent, action can then be taken. The Sabine River Authority does

JUL 10 1989

not even talk of needing the water before the year 2030 — 41 years in the future. Texas lakes silt up fast and a lake built now would have lost much of its capacity by the year 2030.

H.R. 188 would not even confine the relinquishment of the easement to the approval of an application by the Texas Water Commission. Release of the easement would be triggered, not by the granting of a permit but by the mere filing of an application, and the application need not relate to Waters Bluff but can concern "any other water resource project" regardless of its size, scope, nature or purpose.

Finally, the easement would disappear on January 1, 2000, 10-1/2 years from now, even though absolutely nothing was done during that period and the Waters Bluff project had long been dropped. How does this make sense?

I submit that this is an unnecessary and poorly conceived bill, opposed to the public interest, which should be reported out unfavorably.

Thank you for allowing me to express my views.

Very truly yours,

Jos. Irion Worsham

JIW/cgb

CITY of TERRELL

P.O. Box 310
Terrell, Texas 75160

Lanny S. Lambert
City Manager

July 5, 1989

Representative Gerry E. Studds
Chairman of the Subcommittee on Fisheries
and Wildlife Conservation and the Environment
1334 Longworth House Office Building
Washington, D. C. 20515-6232

Honorable Representative Studds,

In the State of Texas, water is considered a very precious commodity. The action of the U.S. Fish and Wildlife Service has prohibited the Waters Bluff Reservoir Project through a conservation easement. Congressman Ralph Hall has introduced H.R. 187 and H.R. 188 to correct this action and the City of Terrell wholeheartedly supports H.R. 187 and H.R. 188.

The City of Terrell urges you to recommend approval of this legislation in order that the plans for the reservoir can be implemented in a timely manner.

Sincerely,

Lanny S. Lambert

Lanny S. Lambert
City Manager

LSL:ls

cc: [redacted]
Honorable Ralph Hall

SIERRA CLUB

LONE STAR CHAPTER

July 3, 1989

2115 Willow Blvd.
Pearland, Texas 77581

The Honorable Gerry Studds
Merchant Marine and Fisheries Committee
1334 Longworth House Office Building
Washington D.C. 20515

Dear Mr. Studds:

I am writing on behalf of the Lone Star Chapter of the Sierra Club in opposition to H.R. 187 and H.R. 188. Both bills were introduced by Congressman Ralph Hall.

H.R. 187 would require the U.S. Fish and Wildlife Service to get the okay of a state's legislature before it could buy land or accept a conservation easement for land that has been studied for a water development project by a local, state or federal water development agency. It would require that such lands be open to the general public at all times.

Bottomland hardwood protection is a top priority of the U.S. Fish and Wildlife Service. The bill would not even require that the study prove that the land is suitable for a water project. Also, there is no limitation on the age of the study. Any study could hamstring this important program.

By requiring that these lands be open to the general public, private land owners would be reluctant to offer a conservation easement. U.S. Fish and Wildlife could not close the lands to protect endangered species or important nesting habitat. The Service could not close the lands because of overuse.

H.R. 188 would require the U.S. Fish and Wildlife Service to relinquish a conservation easement given to the Service by the Little Sandy Hunting Club. The easement is approximately 8,800 acres. The land has been protected by the club for nearly ninety years. It is considered a prime example of East Texas bottomland hardwoods and is a very important addition to the U.S. Fish and Wildlife Service protected lands in Texas.

Your opposition to these two bills would be greatly appreciated.

Sincerely,

Jerry Akers
Conservation Chair

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*

TEXAS WATER CONSERVATION ASSOCIATION
206 SAN JACINTO BUILDING
9TH & SAN JACINTO STREETS—AUSTIN, TEXAS 78701
512/472-7216
FAX 512/472-0537

CARSON H. HOGE
PRESIDENT
ROBERT LEE JOHNSON
PRESIDENT-ELECT
OWEN M. IVIE
IMMEDIATE PAST PRESIDENT
LEROY GOODSON
GENERAL MANAGER

July 7, 1989

The Honorable Gerry E. Studds,
Chairman, Subcommittee on Fisheries & Wildlife
Conservation and the Environment
House Annex Two
Room 543
Washington, D.C. 20515-6232

Dear Chairman Studds:

The Texas Water Conservation Association, supports and endorses the passage of H.R. 187 and H.R. 188 as introduced by the Honorable Ralph Hall, M.C.

The TWCA is a statewide organization composed of individuals, firms, corporations, cities, water districts and authorities, public and private agencies, and groups dedicated to the task of conserving, developing, protecting and utilizing the water resources of Texas for all beneficial purposes.

We urge that Congress take action that would eliminate the conflict between the United States Fish and Wildlife Services' Texas Bottomland Hardwood Preservation Program and water resources planning sites designated by the Texas Water Development Board in the Texas Water Plan and other water projects designated by local or regional agencies to meet future water needs of the citizens of Texas. Although we recognize the ecological importance of selected bottomland hardwoods, the federal government's unilateral implementation of a program that eliminates the State's use of sites for water development conflicts with the needs of our citizens and the primacy of State control of its water.

The TWCA is a statewide organization composed of individuals, firms, corporations, cities, water districts and authorities, public and private agencies, and groups dedicated to the task of conserving, developing, protecting and utilizing the water resources of Texas for all beneficial purposes.

It is imperative that the State be involved and that appropriate hearings and notices be given prior to action by the U.S. Fish & Wildlife Service relative to water resource projects.

Both H.R. 187 and H.R. 188 will clarify this issue and we urge your favorable support of Congressman Hall's legislation.

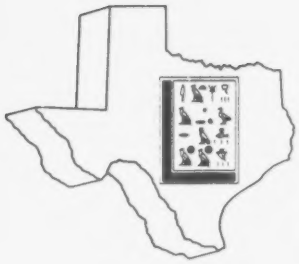
Sincerely,

Leroy Goodson

Leroy Goodson,
General Manager

LG:vlj

cc: Congressman Solomon P. Ortiz - Member of Subcommittee
Congressman Ralph Hall
Congressman Greg H. Laughlin - Member of Committee on Merchant Marine and Fisheries
Congressman Jack Fields - Member of Committee on Merchant Marine and Fisheries



TEXAS CHAPTER

THE WILDLIFE SOCIETY

JUL 10 1989

June 28, 1989

The Honorable Gerry Studds, Chairman
House Subcommittee on Fisheries and Wildlife
Conservation and Environment
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Studds:

The Texas Chapter of The Wildlife Society is Texas' largest organization of professional wildlife biologists. The Wildlife Society is an international, non-profit organization of wildlife managers, planners, and scientists. The Texas Chapter's 300 members are employed by a variety of universities, private businesses, and government organizations throughout the State.

The Texas Chapter is particularly interested in promoting the wise use of the natural resources and wildlife of Texas. We are acutely aware of the numerous, often conflicting demands on these resources and the need to balance demands for preservation and development.

We are concerned about two bills, H.B. 187 and H.B. 188, introduced in the Congress by Congressman Ralph Hall (D-Texas) and scheduled to be heard by your subcommittee on July 11. These bills seek to void a perpetual conservation easement held by the U.S. Fish and Wildlife Service on the Little Sandy Hunting and Fishing Club (H.B. 188) and to require the U.S. Fish and Wildlife Service to obtain the permission of the appropriate state legislature prior to acquiring any easement affecting "water resource land" (H.B. 187).

The Texas Chapter has supported, and continues to support, the protection of the Little Sandy Hunting and Fishing Club by a conservation easement held by the U.S. Fish and Wildlife Service. This easement protects nearly 4,000 acres of unique, old-growth forest and open water habitat important to migratory waterfowl and other wildlife species. Protection of this area and its waterfowl resources serves to further goals outlined in the North American Waterfowl Management Plan.

While we are fully aware of the necessity of providing dependable water supplies to the people of Texas, we do not endorse unnecessary water development projects. The Sabine River Authority claims that the Waters Bluff Reservoir, which would inundate the Little Sandy Club, is necessary to supply the water needs in northeast Texas. Based on an analysis of water needs in the area, we feel that the Water Bluff site is not needed to supply the needs of the area. The 1984 Texas Water Plan does not list this site as one of the potential projects needed to supply water to the state. Furthermore, other sites are available in the upper Sabine Basin and adjacent basins to supply the projected needs of northeast Texas. Additional water for the city of Dallas, the ultimate consumer of the major portion of the water in the proposed Waters Bluff Reservoir, can be obtained from many sources.

Thank you for the opportunity to express our views on this matter. If we can provide additional data, please do not hesitate to contact us.

Sincerely,

Ray C. Telfair II

RAY C. TELFAIR II, PRESIDENT
Texas Chapter of The Wildlife Society

Trinity River Authority of Texas

General Office

0704.100/0903.101.001

July 11, 1989

The Honorable Gerry E. Studds, M.C.
Chairman, Subcommittee on Fisheries and
Wildlife Conservation and the Environment
1334 Longworth House Office Building
Washington, D.C. 20515-6232

Re: H.R. 187 and H.R. 188 - July 11 Hearing

Dear Mr. Chairman:

Please include the following comments in the record as supporting H.R. 187 and H.R. 188.

The Trinity River Authority of Texas is a conservation and reclamation district and a governmental agency of the State of Texas. The Authority comprises all of the territory in five counties and parts of twelve other counties in the Trinity River Basin which is generally located between the Dallas/Fort Worth Metroplex on the north to Trinity Bay, just east of the City of Houston, on the south.

One of the major duties given the Authority by the Texas Legislature when created in 1955 was to prepare a master plan for the maximum development of the soil and water resources of the entire Trinity River Basin. The Authority has had a Master Plan since 1958 and has supplemented the plan on several occasions. The most recent plan was adopted in February of this year. The TRA Master Plan is a guide for the development of water resources in the entire Trinity River Basin. The Plan is used by a number of entities throughout the Trinity Basin for analysis of potential water resource projects.

TRA's Master Plan has identified a number of potential reservoir projects in the middle and lower portions of the Trinity Basin. The projects identified are Tennessee Colony, Tehuacana, Upper Keechi, Big Elkhart, Hurricane Bayou, Lower Keechi, Bedias, Nelson, Harmon, Gail, Mustang and Long King Reservoirs.

P.O. Box 60
Arlington, Texas 76010
(817) Metro 467-4343

A study by the U. S. Fish and Wildlife Service, May 1985, entitled "Texas Bottomland Hardwood Preservation Program, Final Concept Plan", (TBHPP) indicates Tennessee Colony, Tehuacana, Hurricane and Bedias Reservoirs as being in conflict with portions of bottomland and hardwood sites identified for preservation. Tennessee Colony and Tehuacana are the only remaining major reservoir sites left in the mid-Trinity Basin able to supply water to the Dallas/Fort Worth and surrounding areas. Bedias Reservoir is similarly the only reservoir site left in the lower Trinity Basin able to provide water for remote regional needs and some local needs. The most crippling blow that the TBHPP makes to the Trinity River Authority's Master Plan is the potential threat to all of the large reservoir sites in the basin.

This report makes it extremely difficult, if not impossible, to plan for future water supply because of the uncertainty of whether a reservoir site or sites will be available when needed. If the U. S. Fish and Wildlife Service had complied with NEPA prior to the issuance of TBHPP, the Authority would have been able to identify which sites will be accepted into the refuge system and which sites would not.

Another concern TRA has with the TBHPP is that it could be used by landowners and environmental groups to block reservoir projects by transferring into the refuge system land which will be inundated by the construction of a reservoir. There is nothing to suggest that the list contained in the TBHPP might not change in the future. This uncertainty and the fact that the easement is entered into as an administrative act of the Fish and Wildlife Service with the private landowner and requires a special act of Congress to reverse, disregarding state or local public needs or purposes, raises the prospect of an administrative veto by one federal agency (with one private landowner) of any other level of government or any other federal agency. Congress would have to act in a matter in which a local action would be set against a national wildlife refuge. The efforts could easily extend to wastewater collection and treatment, drinking water transport and other activities in the Trinity Basin.

For these reasons the Trinity River Authority of Texas supports and urges the Committee to favorably consider H.R. 187 and H.R. 188.

Yours very truly,

DANNY F. VANCE
General Manager

DFV/ce

cc: The Honorable Ralph Hall, M.C.
The Honorable Charles Wilson, M.C.
The Honorable Joe Barton, M.C.
The Honorable Jim Chapman, M.C.

WESTERN STATES WATER COUNCIL

Creekview Plaza, Suite A-201/942 East 7145 South/Midvale, Utah 84047/(801) 561-5300 / FAX (801) 255-9642

July 6, 1989

Gerry E. Studds, Chairman
Subcommittee on Fisheries, Wildlife Conservation
and the Environment
House Committee on Merchant Marine and Fisheries
237 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Studds:

I am writing to request that you submit this letter and the enclosed positions of the Western States Water Council in the record of the hearing to be held July 11th on H.R. 187 and H.R. 188.

As you may know, the Western States Water Council consists of representatives appointed by the governors of sixteen western states. We address a broad range of water policy issues on behalf of the region. The enclosed positions concern the acquisition of a conservation easement to lands in Wood County, Texas, conveyed to the United States Fish and Wildlife Service by the Little Sandy Hunting and Fishing Club.

In January of 1987, the Council adopted a position opposing the acquisition without full consideration of the impacts of such acquisition on water supplies and without full coordination with potentially affected federal, state, regional and local entities. Such consideration and coordination had not taken place, nor had there been an assessment of the potential conflicts with proposed water supply reservoirs. The Council urged the Service to design a course of action to accommodate both wildlife and water supply needs, prior to the acquisition of the land in question. This was particularly important in light of the fact that according to the terms of the proposed acquisition, the lands would continue to be administered for the enjoyment of private clubs and organizations to the exclusion of the general public.

Nevertheless, despite the objections expressed in the enclosed position, and those of many other state and local interests in Texas, the non-development easement was accepted by the Fish and Wildlife Service. In response to the Council's position, which was forwarded to the Service by Senator Orrin Hatch, Director Frank Dunkle wrote a letter dated April 7, 1987, a copy of which is also enclosed. Among other things, Mr. Dunkle explained that establishing the refuge would not necessarily preclude a reservoir because, "if future water demands indicate an obvious need for a reservoir, Congress can reverse the decision that established a refuge."

Given this response, the Western States Water Council again adopted a position addressing this issue on January 22, 1988. The position concludes that the draft environmental assessment prepared by the Service does not adequately consider the effects of the acquisition on the Water Bluff Reservoir Project and future water needs of the State of Texas and that the precedent established by this acquisition "could have serious effects on other proposed reservoir sites throughout the western states." The Council, therefore, resolved to urge Congress to enact legislation which would remedy the problems raised by the actions of the Fish and Wildlife Service in this matter.

As you and the other members of the Subcommittee consider such legislation, we hope that you will consider the views of the Western States Water Council as expressed unanimously in the enclosed positions.

Sincerely,

Craig Bell

D. Craig Bell
Executive Director

Enclosures

cc: Congressman Ralph M. Hall

POSITION
of the
WESTERN STATES WATER COUNCIL
Regarding
U.S. Fish and Wildlife Service Acquisition of
Nondevelopment Easements
January 22, 1988

WHEREAS, a private hunting and fishing club in Texas has donated to the U.S. Fish and Wildlife Service a permanent easement to utilize their land as a national wildlife refuge, while retaining exclusive hunting privileges on such land and while continuing to exclude the public from such land; and

WHEREAS, the U.S. Fish and Wildlife Service did not coordinate its review of the proposed acquisition under the National Environment Policy Act with affected federal, state, regional and local entities; and

WHEREAS, the draft environmental assessment prepared by the U.S. Fish and Wildlife Service does not adequately consider the effects of the acquisition on the Waters Bluff Reservoir project and future water needs of the State of Texas; and

WHEREAS, suitable reservoir sites in the West are limited and the precedent established by this acquisition could have serious effects on other proposed reservoir sites throughout the western states; and

WHEREAS, the Fish and Wildlife Service has nevertheless proceeded to acquire the nondevelopment easement at the Waters Bluff Reservoir site and to grant exclusive hunting privileges to the private hunting and fishing club; and

WHEREAS, the Western States Water Council is concerned about the potential westwide application of this action by the U.S. Fish and Wildlife Service.

NOW THEREFORE BE IT RESOLVED that the Council urge Congress to enact legislation which would remedy the problems raised by the actions of the Fish and Wildlife Service in this matter.

SAN ANTONIO RIVER AUTHORITY

EXECUTIVE COMMITTEE
Chairman — Paul K. Herder
Vice Chairman — Truett Hunt
Secretary — W. W. Lorenz
Treasurer — Mary McCampbell
Member-at-Large — Allan B. Polunsky
GENERAL MANAGER
Fred N. Pfeiffer

1.20-8.2.3

July 5, 1989

Letter sent to Congresswomen listed
on the reverse.

The Honorable ----------
U. S. House of Representatives
Washington, D.C. 20515

RE: H.R. 187 and H.R. 188

Dear Congresswoman:

As General Manager of the San Antonio River Authority I want you to know that we support passage of H.R. 187 and H.R 188.

Enclosed for your reference and consideration is a copy of San Antonio River Authority Resolution No. R-792 which addresses the issues which these proposed congressional actions will somewhat correct.

Your consideration of our concerns are deeply appreciated.

Sincerely,

FRED N. PFEIFFER
General Manager

FNP:mle
Encl.

cc: Congressman Ralph Hall

BOARD OF DIRECTORS

	Bexar County		Wilson County	Karnes County	Goliad County
District 1 Jesse Oviedo	Place 3 Paul K. Herder	Place 5 Nancy M. Steves	W. W. Lorenz	Truett Hunt	R. H. Ramsey, Jr.
District 2 Martha Clifton McNeel	Place 4 Cecil W. Bain	Place 6 Allan B. Polunsky	J. C. Turner	H. B. Ruckman, III	Mary McCampbell

100 East Guenther Street • P.O. Box 830027 • San Antonio, Texas 78283-0027 • (512) 227-1373

RESOLUTION NO. R-791:

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN ANTONIO RIVER AUTHORITY OPPOSING THE ACQUISITION OF NON-DEVELOPMENT OR REFUGE LANDS BY GOVERNMENTAL ENTITIES WITHOUT FULL COORDINATION WITH ALL OTHER AFFECTED ENTITIES AND WHERE THE USE OF SUCH LANDS WILL BE RESTRICTED TO PRIVATE USE AND SUPPORTING THE DEVELOPMENT OF PROCEDURES WHICH WILL ASSURE FULL EVALUATION OF ECONOMIC, ENGINEERING, ENVIRONMENTAL AND HUMAN FACTORS.

WHEREAS, proposed contributions of non-development easements and/or refuge lands to governmental entities without consideration and evaluation of economic, engineering, environmental and human need factors may prevent the construction of public projects necessary for the general welfare of the citizens of Texas and the whole nation.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SAN ANTONIO RIVER AUTHORITY THAT THE AUTHORITY:

1. Opposes the acquisition of non-development or refuge lands by governmental entities when such acquisition appears designed to block development of necessary public projects such as officially designated reservoir sites.

2. Opposes the acquisition of non-development or refuge lands by governmental entities without full consideration of the impact of such acquisition on other public projects or programs and without full coordination with potentially-affected federal, state, regional and local entities.

3. Opposes the acquisition of non-development or refuge lands by governmental entities, when the use of such lands will be restricted to private clubs and organizations to the exclusion of the general public.

4. Supports development of federal and state procedures for timely resolution of conflicts in proposed uses of natural resources which will assure the consideration of the views of all affected federal, state and local agencies and full evaluation of economic, engineering, environmental and human factors.

PASSED AND APPROVED this the 17th day of December, 1986.

Cecil W. Bain

CECIL W. BAIN, Chairman

ATTEST:

W. W. Lorenz

W. W. LORENZ, Secretary

BRAZOS RIVER AUTHORITY

4400 COBBS DRIVE • P. O. BOX 7555 • TELEPHONE AREA CODE 817 776-1441
WACO, TEXAS 76714-7555

July 10, 1989

Honorable Gerry E. Studds
Chairman
Subcommittee on Fisheries and Wildlife
Conservation and the Environment
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
House Annex 2
Room 543
Washington, D.C. 20515

Dear Mr. Chairman:

The Brazos River Authority is a governmental subdivision of the State of Texas with responsibility for developing, conserving and making the surface water resources of the 42,000 square-mile Brazos River Basin available to help meet the water supply needs of the people of Texas. We respectfully request that the following comments on H.R. 188 by Congressman Ralph Hall be included in the written record of the hearing on this legislation to be held by your Subcommittee on July 11, 1989.

H.R. 188 addresses the specific problem being encountered by the Sabine River Authority of Texas as the result of the acceptance by U.S. Fish and Wildlife Service of a perpetual non-development easement over 3,802 acres of land belonging to the Little Sandy Hunting and Fishing Club. Under terms of the easement, the refuge area remains the private hunting and fishing domain of the club members, without provision for public access. Inclusion of this area into the National Wildlife Refuge System could permanently preclude the development of the Waters Bluff Reservoir proposed by Sabine River Authority to meet regional water supply needs in the upper Sabine River Basin area. This loss of a needed resource would not even be offset by provision of an area available for other uses by the public.

Suitable sites in the upper Sabine River Basin for water resource development projects are limited. In fact, the Sabine River Authority's updated Master Plan indicates that there are only two potential reservoir sites which are feasible for construction within the planning period for providing the regional area water supply needs. Obviously it would not be in the best public in-

terest to preclude development of one of these sites for preservation of a private hunting and fishing domain when alternatives exist which would provide both dependable water supplies and public access to enhanced wildlife habitat.

We respectfully urge favorable consideration of H.R. 188 by the Subcommittee.

Sincerely,

CARSON H. HOGE, P.E.
General Manager

CHH:bok

cc: Congressman Ralph M. Hall
Each Member, Board of Directors
Brazos River Authority
Sam Collins

BRAZOS RIVER AUTHORITY

4400 COBBS DRIVE • P. O. BOX 7555 • TELEPHONE AREA CODE 817 776-1441
WACO, TEXAS 76714-7555

July 10, 1989

Honorable Gerry E. Studds
Chairman
Subcommittee on Fisheries and Wildlife
Conservation and the Environment
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
House Annex 2
Room 543
Washington, D.C. 20515

Dear Mr. Chairman:

The Brazos River Authority is a governmental subdivision of the State of Texas with responsibility for developing, conserving and making the surface water resources of the 42,000 square-mile Brazos River Basin available to help meet the water supply needs of the people of Texas. We respectfully request that the following comments on H.R. 187 by Congressman Ralph Hall be included in the written record of the hearing on this legislation to be held by your Subcommittee on July 11, 1989.

Every study and projection that has been made during at least the last three decades has indicated that, even with the most careful conservation, full development of Texas' water resources will be required to supply the future needs of the people of the State. The latest revision of the Texas Water Plan shows that whereas the estimated year 2000 dependable water supply from the State's existing major water supply reservoirs will be about 11 million acre-feet annually, projected surface water requirements statewide in the year 2000 will be 11.725 million acre-feet. Projected requirements for years 2010, 2020 and 2030 are 13.5 million acre-feet, 15.26 million acre-feet and 18 million acre-feet, respectively. In the Brazos Basin, water available from existing sources is already fully committed for use, and any new requirements must be met from sources yet to be developed.

In view of these circumstances, it is apparent that the ability to fully develop the State's potential water supplies must be preserved. Natural factors not subject to alteration by man determine the best sites for development of surface water supply reservoirs. Such sites are limited in number. It is therefore

important that nothing be done that would prohibit use of such a site for development of a water supply reservoir when the need arises.

A procedure which allows needed water resource development projects to be permanently blocked simply by having one private landowner in a proposed reservoir area, without relinquishing ownership or control of his property and at no cost, grant a non-development easement to the Fish and Wildlife Service is not in the public interest and, applied Statewide, could bring the development of water resource projects required to meet the future needs of the people of Texas to a complete halt. H.R. 187 would preclude the Fish and Wildlife Service from accepting any such easement unless the granting of the easement is specifically approved by the legislature of the affected State and the easement is subject to express written guarantees of access by members of the general public to the land concerned at all times.

We respectfully urge favorable consideration of H.R. 187 by the Subcommittee.

Sincerely,

CARSON H. HOGE, P.E.
General Manager

CHH:bok

cc: Congressman Ralph M. Hall
Each Member, Board of Directors
Brazos River Authority
Sam Collins

P.O. BOX 12068
CAPITOL BUILDING
AUSTIN, TEXAS 78711
512/463-0101

DISTRICT OFFICE
P.O. BOX 1218
MOUNT PLEASANT, TEXAS 75455
214/572-1887

BILL RATLIFF
STATE SENATOR

Committees

ECONOMIC DEVELOPMENT
NATURAL RESOURCES
*SUBCOMMITTEE ON WATER
INTERGOVERNMENTAL RELATIONS

March 29, 1989

Honorable Jack Fields
United States Congressman
Room 413 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Congressman Fields

Recent actions by the U. S. Fish and Wildlife Service pose a serious threat to Texas' ability to develop needed water supply projects.

The FWS recently accepted an easement in the public purpose reservoir site for the Sabine River Authority's proposed Waters Bluff Reservoir. There is little doubt that this easement was taken for the express purpose of stopping the development of this project.

I urge you to lend your support to Congressman Ralph Hall's HR 187 and HR 188 which attempt to address this unprecedented action against water projects. Please co-sponsor, or otherwise lend your influence to assisting, Congressman Hall in this effort.

Thank you for your attention to this matter.

Yours very truly,

Bill Ratliff

William R. Ratliff

WRR/ea

cc: Congressman Ralph Hall

Working for the Nature of Tomorrow.

NATIONAL WILDLIFE FEDERATION

1400 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

HAND DELIVERED

August 9, 1989

Congressman Gerry E. Studds
Chairman, Subcommittee on Fisheries and Wildlife Conservation
Merchant Marine and Fisheries Committee
Room 1334, Longworth House Office Building
Washington, D.C. 20515-6230

RE: H.R. 187 and H.R.188

Dear Mr. Studds:

The National Wildlife Federation (NWF) is our nation's largest conservation-education organization with over 5.8 million members and supporters. We have a long-standing commitment to the National Wildlife Refuge System and the conservation of wetlands. We request these comments be entered in the record for the recent Subcommittee hearing (July 11, 1989) regarding H.R. 187 and H.R. 188.

H.R. 187 would prohibit the U.S. Fish and Wildlife Service (Service) from acquiring water resource lands in any state without prior approval from the appropriate state legislature. The NWF strongly opposes H.R. 187 and urges you to also oppose the bill. Passage of the proposed legislation would dramatically impact acquisition and preservation of this nation's dwindling wetland resource, and severely hamper implementation of the North American Waterfowl Management Plan. Further, the proposed legislation directly contravenes Mr. Bush's declared policy of "no net loss of wetlands," as it would effectively designate reservoir development as the highest priority use for wetlands even if they are under consideration by the Service for addition to the National Wildlife Refuge System.

This nation's existing wetlands must be preserved for all their important values. We know wetlands function ceaselessly as remarkable biological systems and they are capable of accomplishing what no other natural physical features can; they buffer the effects of floods and storms; they trap sediments and pollutants; they recharge groundwater and release groundwater; they are brokers of energy in ways that rival the most productive croplands; and they provide critical habitat for numerous fish and wildlife species. Acquisition and protection of the valuable wetland resource must not be hampered by passage of H.R. 187.

H.R.188 would cause the removal of over 3,800 acres of wetland habitat from the National Wildlife Refuge System. Addition of the land in question --the Little Sandy Hunting and Fishing Club(Club)-- to the National Wildlife Refuge System was supported by the NWF (letter attached) when first proposed in 1986. The Club's lands provide prime wintering habitat for thousands of waterfowl, nesting sites for large numbers of colonial nesting wading birds, and is frequently used by endangered species. Because of the extensive wetlands on the site and the importance of the Club's lands for many fish and wildlife species, including endangered species, the NWF strongly opposes H.R. 188.

Thank you for this opportunity to include our comments in the hearing record for H.R.187 and H.R.188. We hope that you will work to defeat these bills, which would hinder the protection of this nation's important wetland habitats.

Sincerely,

Sharon L. Newsome
Vice President
Resources Conservation Department

Attachment

SLN:dbi

cc: The Honorable Walter B. Jones
The Honorable Robert W. Davis
The Honorable Don Young
The Honorable Stephen J. Solarz
The Honorable Earl Hutto
The Honorable Billy Tauzin
The Honorable Roy P. Dyson
The Honorable Claudine Schneider
The Honorable Thomas R. Carper
The Honorable Herbert Bateman

The Honorable Douglas H. Bosco
The Honorable Solomon P. Ortiz
The Honorable James H. Saxton
The Honorable Robin M. Tallon
The Honorable Howard Coble
The Honorable Thomas J. Manton
The Honorable John R. Miller
The Honorable George J. Hochbrueckner
The Honorable Frank Pallone, Jr.
The Honorable Wally Herger
The Honorable Patricia Saiki
The Honorable Curt Weldon
The Honorable Jolene Unsoeld
Sportsmen Conservationists of Texas, Inc.
Texas Committee on Natural Resources
Texas Parks and Wildlife Department
Robert E. Apple, NWF